TOPICAL INDEX

	Page
Interests of Amici	1
Statement	3
Summary of Argument	6
Argument	10
I. The District Court Erred In Applying the "Compelling Interest" Test Rather Than A Less Onerous Standard of Review In Testing the Validity of the Texas School Financing Laws	10
A. The District Court, In the Course of Uncritically Relying Upon Serrano, Erroneously Concluded That the "Necessary to Promote A Compelling State Interest" Test Should Be Applied	10
B. In Determining the Standard of Review to be Applied In an "Equal Protection" Case, all Pertinent Factors Should Be Considered	16
C. Consideration of all Pertinent Factors Involved in This Case Requires That A Less Onerous Standard of Review Should Be Applied In Testing the Validity of the Complex Texas School Financing Laws Under the Equal Protection Clause	21

Page

1. The Individual Interests Involved 22
2. The Actual Character of the Alleged Classification 27
3. Societal or Governmental Interests Supporting or Affected by the Texas School Finance System 32
4. Consequences of Frustrating Legislative and Congressional Attemps to Promote Educational Opportunities 37
5. The Ability of the Courts to Fashion and Enforce Fair and Appropriate Remedies 40

D. Conclusion 41

II. The Texas School Financing System Is Valid Under Any Fairly Applicable Standard of Review 42

III. The Monumental Task of More Fairly Allocating Financial Resources to School Districts Is Properly A Function to be Exercised By the State Legislature and the Congress, and Not By the Courts 58

Differences in Status Quo 58

Allowing for Differences in Educational Needs 59

Allowing for Differences in Costs 61

Allowing for Federal Grants and Private Gifts 61

Page

Allowing for Differential Services Rendered by State and Intermediate Educational Units 62

Allowing for Innovation on "Pilot Project" Basis.. 63

IV. The Judgment Below Should Be Reversed Because the Order Granting the Injunction Lacks Specificity and Fails to Describe in Reasonable Detail the Acts Sought to be Restrained and Because of Absence of Indispensible Parties 72

Lack of Specificity 72

Lack of Indispensable Parties 77

Conclusion 79

TABLE OF CASES AND AUTHORITIES CITED

Cases

Askew v. Hargrave, 401 U.S. 476 91 S.Ct. 856, 28 L.Ed.2d 196 (1971) 26, 27

Board of Ed. of Ind. Sch. Dist., 20, Muskogee v. Oklahoma, 409 F.2d 665 (1969) 14, 26, 49

Brown v. Bd., 347 U.S. 483, 98 L.Ed. 873, 74 S.Ct. 686 (1954) 24, 78

Bullock v. Carter, 405 U.S. 134, 31 L.Ed.2d 92,....., 92 S.Ct. 849 (1972) 19, 20, 25

Burruss v. Wilkerson, 310 F.Supp. 572 (W.D. Va. 1969) 26, 55, 68

Carmichael v. Southern Coal Co., 301 U.S. 495, 81 L.Ed. 1245, 57 S.Ct. 868 (1936) 26

Page

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Page

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McDonald v. Board of Elections Commissioners, 394, U.S. 802, 22 L.Ed.2d 739, 89 S.Ct. 1404 (1969) 19, 27
McInnis v. Ogilvie, 394 U.S. 322 (1969) 26, 55
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Pierce v. Society of Sisters, 268 U.S. 510, 269 L.Ed. 1070, 45 S.Ct. 571 (1925) 24, 36, 48
Reynolds v. Sims, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964) 25, 31
Rodriguez v. San Antonio Independent School District, 337 F. Supp, 280 (1972) 2
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Schilb v. Kuebal, 40 L.W. 7107 (1971) 18
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Page

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Wisconsin v. Yoder, ...U.S....., 32 L.Ed. 2d 15, 92 S.Ct. .....(1972) 18, 24, 36, 37, 48, 70
Wright v. Council of the City of Emporia, 40 Law Week 4806 49

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Statutes Page

California Education Code,
§§894-894.4 47
§§6450 46
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§§6499-6499.9 46
§§6750-6753 47
§§6801-6822 47
§§6870-6870.6 47
§§6901-6920 47
§6920 47
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§§26401-26404 47

Page

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Rule 65(d) 9, 74, 75, 76, 77

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§§296-2, 298-2 (1968) 2

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§§16.01 et seq. 43
§§20.01 ..... 32, 43
§§16.74-16.78 48

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IN THE

Supreme Court of the United States

October Term, 1971

No. 71-1332

SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, et al.,

Appellants,

vs.

DEMETRIO P. RODRIGUEZ, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

BRIEF OF AMICI CURIAE: RICHARD M. CLOWES, SUPERINTENDENT OF SCHOOLS OF THE COUNTY OF LOS ANGELES, HAROLD J. OSTLY, TAX COLLECTOR AND TREASURER OF THE COUNTY OF LOS ANGELES; EL SEGUNDO UNIFIED SCHOOL DISTRICT; GLENDALE UNIFIED SCHOOL DISTRICT; SAN MARINO UNIFIED SCHOOL DISTRICT; LONG BEACH UNIFIED SCHOOL DISTRICT; SOUTH BAY UNION HIGH SCHOOL DISTRICT; BEVERLY HILLS UNIFIED SCHOOL DISTRICT; AND SANTA MONICA UNIFIED SCHOOL DISTRICT, ALL OF LOS ANGELES COUNTY.

INTERESTS OF AMICI

Amici Curiae are (1) the County Superintendent of Schools and the Treasurer-Tax Collector of the County of Los Angeles who are charged with administering certain aspects of the California public school financing system as it affects local school government in Los Angeles County, and (2) several school districts in the County of Los Angeles. Amici are spon-

sored by John D. Maharg, County Counsel of Los Angeles County, their authorized law officer. Amici, with the exception of one of the school districts, are all parties defendant (the school districts by way of intervention) in the case of *Serrano v. Priest* (Los Angeles Superior Court No. C938254) which is now proceeding to trial in a California Superior Court, upon remand from the California Supreme Court. See *Serrano v. Priest,* 5 Cal.3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601.

In the action presently before this Court, the court below cited the opinion of the California Supreme Court in *Serrano v. Priest, supra* (1971), in support of its conclusion that Appellees are deprived of equal protection of the laws under the Fourteenth Amendment to the United States Constitution by the operation of the Texas public school financing system. *Rodriguez v. San Antonio Independent School District,* 337 F.Supp. 280, 281 (n. 1) (1972).

The school districts appearing as amici are charged with the operation of public schools within Los Angeles County, all of which would be adversely affected to a serious degree by application of the rule urged by Appellees and adopted by the court below. The Texas public school financing system is substantially similar to the system of financing public schools in California.[1]

[1]The California and Texas school financing systems are similar in effect to the systems used in 49 of the 50 states. Hawaii is the only state without local school district control of education. See *Hawaii Rev. Laws,* §§296-2, 298-2 (1968).

Amici are gravely concerned that the "equal protection" standard of review as applied to state public school financing systems by the court below in this case, and by the California Supreme Court in *Serrano v. Priest, supra,* if upheld by this Court, would place a constitutional straitjacket upon local school boards, state legislatures and Congress in their attempts to solve and adjust the myriad of problems involved in the day-to-day and on-going operation of this nation's public school systems.

Amici believe that one of the geniuses of the public school systems in America in general, and California in particular, has been the incentives for and abilities of local school boards and state legislatures, democratically elected, to experiment and innovate in finding solutions to educational problems, many of which are of purely local concern and others which are of universal application. The responsiveness of the local school district to the needs, desires and problems of the local populace would inevitably be drastically impaired by application of the constitutional rule of law sought to be established by Appellees.

STATEMENT

This case presents to this high Court fundamental questions concerning the drastic restructuring of a state's local governmental services, and the role to be played by the judicial branch of government in doing so. The impact of the decision to be made in this case

will be felt not only by the thousands of school districts in 49 of the 50 states, but by reason of the logical difficulties in distinguishing educational services from other important governmental services provided by local units of state government, the impact of this decision will surely be felt by almost all such local governmental units with respect to their provision of important services in their respective communities.[2]

The strategies employed in this case were fully mapped out in 1970 by Professor Coons and his associates in their book "Private Wealth and Public Education."[3] This book was dedicated by its authors "To nine old friends of the children," and the validity of the arguments contained in their book are now presented to this Court for determination.

It is this book that first presented the disarmingly simple formulation of a proposed new principle of "equal protection" constitutional law. Coons' "simple" formula is: "The quality of public education may not be a function of wealth other than the wealth of the state as a whole." (Coons, et al., *supra*, Footnote 3, Introduction, p. 2.)

It may be seen from the Order appealed from that the District Court below fully embraced this formula.[4]

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[2]A lawsuit challenging state and local legislation regulating the funding of police and fire protection services on the basis of the *Serrano* rule has already been filed in California. A *"Serrano"*-type complaint, *San Anselmo Police Officers Association, et al. v. The City of San Anselmo, et al.*, 61302, was filed on May 3, 1972, in the County of Marin.

[3]Coons, John P., Clune III, Wm. H., Sugarman, Stephen D., *Private Wealth and Public Education*, the Belknap Press of Harvard University Press, Cambridge, Mass. (1970).

[4]337 F.Supp. 280, 285-286.

The California Supreme Court, the first to declare an entire state's system of financing its public schools to be unconstitutional, likewise adopted Coons' thesis.[5]

The California Supreme Court emphasized in its Modification of Opinion that inasmuch as the case involved an appeal from a judgment of dismissal entered upon the sustaining of general demurrer to the Complaint, it was not a "final judgment on the merits." The Supreme Court remanded the case to the trial court with directions to overrule the demurrers and to allow defendants a reasonable time to answer. The Answer was filed on May 1, 1972, and the case is now being prepared for trial.

As Coons points out, the system of financing public schools which is here under attack is one of many variations of the so-called "foundation plan." The conceptual basis for the "foundation plan," the purpose of which was to make adjustments in state contributions to public school districts within the state to account for district wealth variations, was originated by George D. Strayer and Robert M. Haig in 1923.[6] The "foundation plan" as utilized by most of the states with numerous variations was developed by Paul R. Mort.[7]

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[5]*Serrano v. Priest*, 5 Cal.3d 584, 589, 487 P.2d 1241, 96 Cal. Rptr. 601: "We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors."

[6]Strayer, G. D. and Haig, R. M., *Financing of Education in the State of New York* (New York, 1923).

[7]Coons, *supra*, p. 63; Mort, P. R., Reusser, W. C. and Polley, J. W., *Public School Finance*, 3d Ed. (New York, 1960).

Amici will not undertake to describe the "foundation plan" used in the State of Texas, which is under attack here, as this will no doubt be fully described in the briefs of the parties to the suit. The California Foundation Program is described by the California Supreme Court in *Serrano v. Priest,* 5 Cal.3d 584, 591, 595.

SUMMARY OF ARGUMENT

1. The District Court below erroneously held that the complex system of laws providing for the financing of the Texas public school system violates the "equal protection" clause of the Fourteenth Amendment to the United States Constitution. The District Court erroneously applied the onerous standard of review whereby the defendants were required to carry the burden of showing that its legislative classifications were necessary to promote compelling state interests. The first question to be resolved in this case is "What standard of review is to be applied in determining the validity of the complex public school financing laws?" In uncritically relying upon *Serrano v. Priest,* 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal.Rptr. 601, the District Court failed to consider vital questions and factors. The District Court should have carefully analyzed the alleged suspect classification of wealth and noted that this classification involved wealth of school districts and not wealth of people. The District Court should have noted that the alleged "fundamental" interest (quality of education) allegedly affected by the alleged

"wealth" classification was not an interest of people in quality education but rather an interest in not being unduly burdened in paying taxes. The court failed to take into consideration, in determining its standard of review, numerous other factors, including the individual interests of parents in directing the upbringing and education of their children, vital societal or governmental interests in permitting within reasonable limits local community control in making decisions affecting the schooling of the children in the community and in allocating local public funds in support thereof, the necessity of permitting the Legislature and Congress to remain free of a constitutional straitjacket with respect to their efforts to improve public education and make innovations therein, and the ability of the courts to fashion and enforce fair and appropriate remedies as compared with the ability of the Legislature and Congress to deal with the complex and rapidly changing problems in public education. Applying all these considerations, the standard of review to be applied to this complex set of school financing laws must be less onerous than the one applied by the District Court.

2. Under any standard of review which might fairly and reasonably be applied to the complex school financing laws of Texas, the laws are valid under the equal protection clause. The people of Texas, including the parents of children attending public schools in that state, have expressly attempted to preserve and protect, through their financing system, their compelling interest in assuring essential educational services for

all children, while at the same time making appropriate accommodations to the vital interest of parents in local communities in the course those educational services take. The individual, societal and governmental interests served by the Texas school financing laws are not merely important, they are compelling. This is true especially when it is considered that the school financing laws are necessarily complex if they are to attempt to make provision for the differing educational needs of students, and the inability of plaintiffs to establish feasible and better alternatives to meet those differing educational needs while accommodating a reasonable degree of local decision-making with respect to the education of the children. The classifications made in the school financing laws of Texas promote these compelling interests in such a way as to satisfy any realistic standard of judicial review.

3. Independent of the foregoing, the monumental nature of the task of more fairly allocating financial resources of the state among the school districts is one which the courts are not equipped to tackle. This necessarily complex, t i g h t l y interwoven and rapidly changing set of laws calculated to approach excellence in the providing of educational services to students of widely varying educational needs, is such that only the Legislature, local school boards, and Congress are equipped to handle. The resources available to them far outstrip the resources available to the courts to deal with these complexities. These problems are far better tackled by experts working together t o w a r d

common goals than by courts relying upon the services of experts in adversary proceedings. Were the courts to undertake the staggering task of closely monitoring efforts of the Legislature, school boards and Congress with respect to their efforts to improve the quality of public education, they would to that extent encourage those bodies to deem themselves absolved of their responsibilities, with the further adverse consequence of subjecting the results of such efforts as they might continue to make to extreme uncertainty, with resulting doubts as to the validity of school district taxes and contractual commitments. The courts should accordingly exercise judicial restraint and evidence their faith in the democratic processes, the arena in which solutions to these complex problems have historically and are now being hammered out.

4. In any event, the judgment below should be reversed because the order granting the injunction lacks specificity and fails to describe in reasonable detail what the defendants must do in order to avoid the drastic contempt remedy available to enforce the order. The order, in enjoining the defendants from giving any force or effect to the Texas school financing laws "insofar as they discriminate against plaintiffs and others on the basis of wealth other than wealth of the State as a whole," clearly fails to comply with the requirements of Section 65(d) of the Federal Rules of Civil Procedure. In further ordering that named defendants be ordered to reallocate the school funds "in such a manner as not to violate the equal protection provisions

of both the United States and Texas Constitutions," the order even more clearly violates the provisions of Rule 65(d). The Judgment below should also be reversed because of failure of the plaintiffs to include as defendants those authorized by law to carry out an effective decree, namely, the Legislature and the Governor.

ARGUMENT

I

THE DISTRICT COURT ERRED IN APPLYING THE "COMPELLING INTEREST" TEST RATHER THAN A LESS ONEROUS STANDARD OF REVIEW IN TESTING THE VALIDITY OF THE TEXAS SCHOOL FINANCING LAWS.

A. The District Court, in the course of uncritically relying upon Serrano, erroneously concluded that the "necessary to promote a compelling state interest" test should be applied.

The District Court below followed the decision of the California Supreme Court in *Serrano v. Priest*, 5 Cal.3d 584, 487 P.2d 1241, 96 Cal.Rptr. 601 (1971) in determining that the onerous "compelling interest" test should be applied in determining the validity or invalidity of the system of laws of the State of Texas making provision for the financing of the public schools. In footnote 1 the District Court stated: "Serrano convincingly analyzed discussions regarding the suspect nature of classification based on wealth . . ."

(337 F.Supp. 280, 281.) (Professor Goldstein of the University of Pennsylvania has written a most penetrating analysis of the elusive principles of law involved in *Serrano v. Priest,* which amici believe to be so valuable in analyzing the issues involved that we attach a copy of his article, "Interdistrict Inequality in School Financing: A Critical Analysis of *Serrano v. Priest* and Its Progeny," 120 Univ. of Penn. L.R. 504 (1972). (See Appendix A.) The extreme importance of this case appears to amici to provide complete justification for commending to this busy Court that it read Professor Goldstein's thought-penetrating analysis.)

In relying heavily upon *Serrano,* the District Court did so uncritically. It failed to note, for example, that the case came to the California Supreme Court by way of appeal from a judgment of dismissal entered after sustaining the defendants' general demurrers, and that accordingly the California Supreme Court assumed that all material allegations in the complaint were true.

Thus, the Supreme Court assumed for the purposes of its decision that different levels of educational expenditure affect the quality of education. (5 Cal.3d 584, 599 n. 14, 601 n. 16, 487 P.2d 1241, 1251, 1253.) The California Supreme Court specifically noted that these were matters which would be the subject matter of proof in the trial court upon remand.

The California Supreme Court also assumed for the purposes of its decision the truth of plaintiffs' allegation that there is a correlation between a district's per

pupil assessed valuation and the wealth of its residents. (5 Cal.3d 584, 600-601, 487 P.2d 1241, 1252.)

The District Court below, in failing to set forth any determination that higher expenditures for education result in better education, apparently relied upon the *Serrano* decision, which, as indicated, assumed . . . the truth of that proposition without deciding it because the case arose by way of demurrer.

As pointed out by Goldstein (App. A, pp. 26-29) research reports so far have found little relationship between expenditure levels and the educational outputs measured, when other variables were held constant, and since *Serrano* sent the matter back to the trial court, "the issue still remains open for proof, proof that does not appear to be available."

The significance of the lack of proof in the District Court below and in *Serrano* is that plaintiffs have failed to satisfy their burden of proof as to the cost-quality correlation in order to invoke the ultimate constitutional principle which they urged upon, and which was adopted by, both courts, i.e., "The quality of public education may not be a function of wealth other than the wealth of the state as a whole." (Goldstein, App. A, p. 14.) To fit educational expenditures into this formula, it becomes necessary to equate educational spending w i t h quality of education. The District Court's uncritical reliance on *Serrano* to equate these two factors was thus unwarranted.

The District Court below also lacked adequate basis for its conclusion that the Texas financing system draws distinctions based upon the wealth of its citizens, in relying upon *Serrano* and upon an affidavit submitted at trial. As noted in Goldstein (App. A, p. 33), the affidavit relied upon by the District Court "was a questionable source; a careful reading of the data contained in the affidavit creates grave doubts about the validity of its conclusions."

The fact of the matter is that both *Serrano* and the *Rodriguez* courts relied upon the extremes presented by statistics, failing to take account of the peculiarities which might be involved in those extremes and ignoring the clustering of the data between the extremes.

It must be readily apparent that some of the people living in at least some of the "poorer" school districts are richer than some of the people living in some of the "richer" school districts. There is nothing on the face of the Texas school financing laws which draws a distinction in distributing the State largesse among the districts which diminishes or withholds its allocations based on low wealth of any individuals. The legislative classifications make no invidious discrimination against people based on their wealth, but rather distribute state school funds to the districts in such a way that districts with lower tax bases are in some cases unable to raise the same number of dollars per pupil as those with higher tax bases. If there is "wealth discrimination" in the State financing system, it is against districts, not people.

The districts, as political subdivisions of the State, enjoy no protection under the equal protection clause against actions of the state.[8] Those who have standing to complain, people, are not discriminated against "on the basis of their wealth." The so-called "suspect classification of wealth" relied upon in *Serrano* and *Rodriguez,* simply does not exist as to those who bring this action and, accordingly, there is no basis for invoking the "compelling interest" test.

The *Rodriguez* court also failed to note that the wealth classification cases relied upon in *Serrano* were cases involving total denial of important rights to indigent persons, such as the right to vote or to be free from imprisonment as a result of criminal prosecution. Here, the question is not one of denying to the poor or to any person the important right to be educated, but rather the question of the *extent* to which the states may exercise discretion in distributing state funds for education differentially in different territories of the state. Actually, both Texas and California distribute more state funds per pupil to those districts with lower assessed valuation per pupil; what the plaintiffs complain about is that the State does not discriminate enough against people living in wealthy areas in favor of those living in poorer areas.[9] As pointed out in Goldstein, App. A, p. 48:

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[8]*Carmichael v. Southern Coal Co.,* 301 U.S. 495, 81 L.Ed. 1245 (1936); *Hess v. Mullaney* (9th Cir. 1954) 213 F.2d 635, cert. den. sub nom. *Hess v. Dewey,* 348 U.S. 835 (1954); *Board of Ed. of Ind. Sch. Dist., 20, Muskogee p. State of Oklahoma* (10th Cir. 1969) 409 F.2d 665.

[9]Would plaintiffs' argument not also constitutionally require California to more steeply graduate its income tax rate (presently 1 to 10%)?

"The real problem is the individual taxpayer's difficulty in paying his tax bill. If *Serrano* labels relative deprivations among districts unconstitutional, then does its logic not require elimination of disproportionate sacrifice among those who pay the tax? Does the former proposition even make any sense without the latter?

"If there is a constitutional vice created by the differential ability of taxpayers to meet their obligations, does this then mean that proportional, or even progressive, taxation is constitutionally compelled? It is doubtful that the *Serrano* court meant to suggest this outcome. Nevertheless, without such a conclusion it is difficult to understand why it is unconstitutional to have a system whereby one district can more easily raise revenue than another. It is indeed probable under present financing systems, including that of California, that the average resident of a rich district pays higher taxes, in terms of gross dollars, for his schools than does the average resident of a poor district, despite the fact that the resident of the rich district is taxed at a lower rate. This may be the result of the higher assessed valuation and, perhaps, larger average property holdings of the individual taxpayers in the rich district. A correlation may even exist between the amount of tax dollars paid by the average resident of a district and the educational expenditures of that district. If this is so, the difficulty is not with disproportionate payments but with inequitable taxation, not only in the hypotheticals above. but also in the existing financing schemes. The logic of *Serrano,* which invalidated these existing financing schemes, may

therefore require the wealthy taxpayer to bear a greater burden than just having to pay more tax dollars than the poor. Instead it may demand at least a proportional tax system, and possibly one that is progressive."

B. In determining the standard of review to be applied in an "equal protection" case, all pertinent factors should be considered.

This case presents to this high Court an unparalleled opportunity to initiate the establishment of more definitive guidelines for determination of the degree of closeness of judicial scrutiny to be applied in cases impugning the validity of statutes under the equal protection clause of the Fourteenth Amendment to the United States Constitution. The complexity of the public school financing laws of the State of Texas, and other elements in this case hereinafter analyzed, demonstrate the need for more definitive guidelines in establishing the all-important standard of review to be applied.

As previously noted, the Court below relied heavily on the reasoning of the California Supreme Court in *Serrano v. Priest,* 5 Cal.3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971). *Serrano* reasoned that a "suspect classification" (wealth) taken together with a "fundamental interest" (education) automatically invokes application of the "compelling interest" test. Under this test, the state must show that the classifications made by the legislation in question are *necessary* to promote

a *compelling* interest of the state. (*Dunn v. Blumstein,* 405 U.S. 330, 31 L.Ed.2d 274, 284, 92 S.Ct. 995 (1972).) If there are other reasonable ways to achieve compelling state interests with a lesser burden on constitutionally protected activity, a state may not choose the way of greater interference; it must choose "less drastic means." (31 L.Ed.2d at 285; *Shelton v. Tucker,* 364 U.S. 479, 488, 5 L.Ed.2d 231, 237, 81 S.Ct. 247 (1960).)

But it is backwards reasoning to conclude from the combination of a "suspect classification" and a "fundamental interest" that the onerous "compelling interest" test is to be applied.[10] Rather, the first question to ask in any equal protection case is "What standard of review is to be applied?" As stated in *Bullock v. Carter,* 405 U.S. 134, 31 L.Ed.2d 92, 99, 92 S.Ct. 849 (1972):

> "The threshold question to be resolved is whether the filing fee system should be sustained if it can be shown to have some rational basis, or whether it must withstand a more rigid standard of review. * * * "In approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters."

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[10]In *Dunn v. Blumstein, supra,* Mr. Chief Justice Burger dissenting, stated: "In both cases some informed and responsible persons are denied the vote, while others less informed and less responsible are permitted to vote. Some lines must be drawn. To challenge such lines by the 'compelling state interest' standard is to condemn them all. So far as I am aware, no state law has ever satisfied this seemingly insurmounatble standard, and I doubt one ever will, for it demands nothing less than perfection." (31 L.Ed.2d at 296.)

To which may be added, perfection is not the standard of excellence that can be expected of our democratic and republican processes as carried on by legislative bodies comprising elected representatives of peoples with widely varying and competing interests.

That more than a simplistic approach to the standard of review is and should be required, is further evidenced by the recent pronouncement of this Court in *Wisconsin v. Yoder,* 405 U.S. ....., 32 L.Ed.2d 15, 24, 92 S.Ct. 1526 (1972), in which the Court stated:

> "Thus, a State's interest in universal education, however highly we rank it, is not totally free from a balancing process when it impinges on other fundamental rights and interests, such as those specifically protected by the Free Exercise Clause of the First Amendment and the traditional interest of parents with respect to the religious upbringing of their children so long as they, in the words of Pierce, 'prepare [them] for additional obligations.' 268 U.S. at 535, 69 L.Ed. at 1078."

See also *Schilb v. Kuebel,* 40 L.W. 4107; *James v. Strange,* 40 L.W. 4711, 4714.

In view of the extreme importance of the standard of review to be applied, and in view of the extreme uncertainty as to the meaning of the term "fundamental interest,"[11] it seems apparent that the courts should not blind themselves to any relevant factors in determining the standard of review to be applied.

This Court has wisely limited application of the onerous "close scrutiny" standard of review to cases

[11]It may be extremely difficult in future cases to distinguish between public education on the one hand, and a host of governmental services on the other hand, with respect to the "fundamental" character of the interests involved, e.g., health, welfare, police, fire, and sanitary services. The courts should leave themselves open to examine these important governmental services in the light of all relevant considerations in determining whether or not they are to be subjected to the virtually impossible burdens of the "compelling interest" test.

in which inherently suspect classifications and well recognized fundamental interests are clearly and definitely involved and affected. (See *Griffin v. Illinois,* 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct. 585 (1956); *Douglas v. California,* 372 U.S. 353, 9 L.Ed.2d 811, 83 S.Ct. 814 (1963); *Harper v. State Board of Elections,* 383 U.S. 663, 16 L.Ed.2d 169, 86 S.Ct. 1079 (1966); *Bullock v. Carter,* 405 U.S. 134, 31 L.Ed.2d 92, ..., 92 S.Ct. 849 (1972); and *Dunn v. Blumstein,* 405 U.S. 330, 31 L.Ed.2d 274, 284, 92 S.Ct. 995 (1972).)

In determining the standard of review to be applied in an equal protection case, and in this case involving extensive and intricately interwoven laws providing the system for financing the schools of the State of Texas, the Court should carefully consider (1) the character of each interest allegedly affected by the legislation, (2) the degree to which each interest is affected, (3) the interrelationship of each *basis* of the legislative classification in question with each *basis* or *reason* for determining whether the interest affected is so vital as to be denominated as "fundamental," (4) the anticipated impact of judicial intervention on the societal or governmental interests promoted by the legislation, and (5) the ability of the courts to fashion and enfore a fair and appropriate remedy. (*Bullock v. Carter, supra, McDonald v. Board of Elections Commissioners,* 394 U.S. 802, 22 L.Ed.2d 739, 89 S.Ct. 1404 (1969); *Dandridge v. Williams,* 397 U.S. 471; *Jefferson v. Hackney,* 40 L.W. 4585 (1972); *Dunn v. Blumstein,* 405 U.S. 330, 31 L.Ed.2d 274, 284, 92 S.Ct. 995

(1972).) Thus, for example, in *Bullock v. Carter*, the Court carefully analyzed the effect of the Texas candidate filing fee system on all interests affected, including the rights of individuals to vote, before concluding that close judicial scrutiny was required because the system had both a "real and appreciable impact on the exercise of the franchise" and a relation to the "resources of the voters supporting a particular candidate." (405 U.S. 134, ..., 31 L.Ed.2d 92, 100.)

When all of the foregoing factors are carefully considered and their interrelationships analyzed, amici submit that it becomes clear that some standard of equal protection review less onerous than the "necessary to promote a compelling state interest" test should be applied to the complex and vitally important school financing laws of the State of Texas.

In sum, the first question to ask in approaching an equal protection case such as this is "What standard of review is to be applied?", and all relevant considerations should be taken into account, inasmuch as deciding upon the standard of review is virtually to decide an equal protection case.

C. Consideration of all pertinent factors involved in this case requires that a less onerous standard of review be applied in testing the validity of the complex Texas school financing laws under the equal protection clause.

Professor Goldstein's article (App. A) points up the opportunity to sharpen the judicial tools available in determining the standard of review to be applied in equal protection cases. This case presents such an opportunity inasmuch as the statutory scheme challenged here on the basis of the equal protection clause is much more complex and presents much greater difficulties than were presented in the cases utilizing the "close scrutiny" test, primarily the school desegregation cases, the reapportionment cases, and the cases dealing with the rights of persons accused of crime to free transcripts or free counsel.

Goldstein's approach is that it is not appropriate to simply examine the legislative classifications, the interests affected thereby and the degree to which the interests are promoted by the means adopted by the Legislature. Goldsein's approach, and we submit it is correct, is that each *basis* of the legislative classification in question is to be examined with respect to its relationship with each *basis* or *reason* for determining that the interest affected is so vital as to be denominated as "fundamental." (App. A, pp. 26, et seq.)

Accordingly, utilizing the approach of considering all relevant factors in the light of Goldstein's sugges-

tions, we turn to examine those factors relevant to determining the appropriate standard of judicial review to be applied in this case.

1. The individual interests involved.

The lower court in the instant case found that "the great significance of education to the individual" was further justification for application of the demanding close scrutiny test. (337 F.Supp. 280, 283.) Nowhere in its opinion, however, does the court identify or analyze the extent to which this interest of the individual is affected by the Texas financing system or the extent to which any adverse effect can or will be remedied by the Court's judgment.

There is no contention in the instant case that the Texas school finance system operates to deny an education to any individual or group of individuals. Indeed, it is at once apparent that the Texas financing system, as does California's, guarantees what the Legislature has determined to be minimum essential educational financing for each pupil through the Minimum Foundation Program (Texas Ed. Code §§16.01, et seq.)[12] The people of Texas, therefore, have not simply undertaken to provide for public schools but have assured support for essential educational programs for each individual attending those schools.

Since it is readily apparent that the financing sys-

[12]California's Foundation Program formulas are found at §§17651-17680, 17702, 17901 and 17902 of the California Ed. Code.

tem does not deny any individual an education, it seems necessary to consider the extent to which the financing system impairs or effects that interest, if at all. The court below apparently did not consider the impact of the financing system on the education an individual receives.[13]

The empirical data amassed in continued efforts to determine factors positively correlated to measurable educational outputs have, to date, failed to support any findings of affirmative correlation between expenditure levels and education outputs. The Coleman report,[14] the findings of which have recently been reaffirmed,[15] found that the expenditure levels and resources of a school system, and even the system itself, have little if any true effect upon educational achievement, and that the two major determinants of educational achievement are the family background of the student and influences of his peer group. (See Coleman, et al., *Equality of Educational Opportunity,* U.S.

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[13]Nowhere in its opinion does the court below discuss the effect of the financing system on the education that is afforded individuals by the Texas school systems. Instead, the court appears to focus solely upon the disparities in tax rates, property valuations, and expenditures, and upon the relative abilities of "wealthy" and "poor" districts to raise additional funds over and above the Foundation Program amounts. The California Supreme Court in *Serrano v. Priest,* was not confronted with this issue, due to the procedural status of that case. As stated by the Court:

> "Defendants contend that different levels of educational expenditure do not affect the quality of education. However, plaintiffs' complaint specifically alleges the contrary, and for purposes of testing the sufficiency of a complaint against a general demurrer, we must take its allegations to be true." *Serrano v. Priest,* 5 Cal.3d 584, 601, 487 P.2d 1241, 1253, 96 Cal.Rptr. 601, ..., n. 16.

[14]Equality of Educational Opportunity, U.S. Dept. of H.E.W., U.S. Govt. Printing Office (1966).

[15]Mosteller & Moynihan, "A Pathbreaking Report" in On Equality of Ed. Opportunity, pp. 36-45; see also Averch, Pincus, et al., How Effective is Schooling? (Rand Corp. 1972).

Dept. of H.E.W., U.S. Govt. Printing Office [1966] at p. 325.)

Coons and his associates make it crystal clear that when they refer to "quality" of public education in the first term of their formula, they are referring to money, and not to actual educational outputs.[16]

While there is no question that education is an interest of vital importance to both the individual and society in general,[17] there is nothing in the record of this case nor the literature and studies in the field of education to indicate that these interests are adversely affected by a school financing system such as the one in question. Unlike the cases involving rights to criminal process and voting rights, where the evil to be remedied[18] could easily be seen to substantially impair the individual interest involved, there is no reliable

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[16]"If we are to speak of equality, we must first reckon with quality. There must be some standard for judging whether education is better in one district than in another. We have already distinguished two basic views of equal opportunity—the objective school concept and the subjective child-performance concept—and the difference is relevant here. Having chosen the objective standard, the measure of quality becomes not what is achieved but *what is available*. This way of stating the issue very nearly dictates the answer. What is available becomes whatever goods and services are purchased by school districts to perform their task of education. Quality is the sum of district expenditures per pupil; quality is money.

"This approach may appear excessively formal, but it has significant advantages. Its employment reduces the problem of quality to manageable simplicity. . . .

* * *

"The formal dollar standard for measuring quality would suffice as a basis for our central theme, that wealth must not determine the quality of public education; indeed, it is an integral part of that theme. . . ." [Emphasis theirs; Coons, et al., *Private Wealth and Public Education, supra*, pages 25-26.]

[17]*Brown v. Bd.*, 347 U.S. 483, 98 L.Ed. 873, 74 S.Ct. 686 (1954); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Wisconsin v. Yoder*, 32 L.Ed.2d 15; *Griffin v. County School Bd.*, 377 U.S. 218 (1964).

[18]e.g., denial of transcript, *Griffin v. Ill.*, 351 U.S. 12 (1956) and attorney, *Douglas v. Calif.*, 372 U.S. 353 (1963) to indigent defendants; denial of vote to indigents—*Harper v. St. Bd. of Elections*, 383 U.S. 663 (1966),

data which indicates that the "evil" of the financing system sought to be restructured by plaintiffs—differential availability of financial resources per pupil—has any adverse effect on an individual's interest in education.

Legislation affecting the right of a person to avail himself of governmental services, such as education, has not been, and should not be, subjected to the same closeness of judicial scrutiny as legislation affecting the constitutionally protected right to vote, the fountainhead of all our rights. Indeed, other interests such as the individual's right to subsistence and shelter would appear to have at least as substantial an effect on an individual's opportunities to survive and succeed in society as education. Yet, this Court has determined that legislative enactments affecting these latter interests are not subject to strict judicial scrutiny. (*Dandridge v. Williams*, 397 U.S. 471 (1970); *Jefferson v. Hackney*, ... U.S. ....., 32 L.Ed.2d 285, 92 S.Ct. ..... (1972); *James v. Valtierra*, 402 U.S. 137, 28 L.Ed.2d 678, 91 S.Ct. 1331.)

Actually, the interest of individuals upon which the court below focused appears to be the individual interest of local property taxpayers in achieving the same ability to raise tax dollars for education as other taxpayers with the same tax rate, regardless of varying property valuations. The logical conclusion, if this interest were to be accorded favored constitutional pro-

dilution of voting power, due to malapportionment *Reynolds v. Sims*, 377 U.S. 533; and primary filing fee requirements, *Bullock v. Carter*, 405 U.S. 134, 31 L.Ed.2d 92, 92 S.Ct. 849 (1972).

tection, would appear to be that progressive taxation is compelled.[19] This Court has held, however, that the benefits to which a taxpayer is constitutionally entitled are those derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the expenditure of public monies for public purposes, and that the benefits received need not be porportional to the burdens imposed by taxation. (*Carmichael v. Southern Coal Co.*, 301 U.S. 495, 81 L.Ed. 1245, 57 S.Ct. 868.)[20]

The many factors involved in the individual taxpayer's choices as to government services to be provided by his taxes, and the relative abilities among taxpayers to pay for those services which affect the tax rates of local school districts, were recognized by the courts in *McInnis v. Shapiro,* 293 F.Supp. 327 (N.D. Ill. 1968) aff'd. sub nom. *McInnis v. Ogilvie,* 394 U.S. 322 (1969), and *Burruss v. Wilkerson,* 310 F. Supp. 572 (W.D. Va. 1969) aff'd. 397 U.S. 44 (1970).[21]

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[19]Goldstein, App. A, p. 49.

[20]Also, it has been held that distribution and utilization of property taxes is a matter within the discretion of the state, and that use of taxes in the county or district where they were raised does not constitute an invidious discrimination or an unreasonable classification. (*Board of Ed. of Ind. Sch. Dist. 20, Muskogee v. State of Oklahoma,* 409 F.2d 665, 668 (10th Cir. 1969); *Hess v. Mullaney,* 213 F.2d 635, 639-40 (9th Cir. 1954).)

[21]The three-judge court in *Hargrave v. Kirk,* 313 F.Supp. 944 (1970), reversed on other grounds sub nom. *Askew v. Hargrave,* 401 U.S. 476, distinguished the operation of the Florida Millage Rollback Act from the financing system involved in *McInnis* on the basis that the property tax ceiling established by the Florida Act prevented local districts from raising more money locally to finance their children's education, thereby requiring them to spend less even if they desired to spend more. This vice is not present in the Texas or California financing systems, which are essentially identical to the systems of Illinois and Virginia. The *Hargrave* court stated, at 313 F.Supp. 944 at 949:

> "Irrespective of the plaintiffs' successful attack on the Act, we know that there will continue to be disparities in per pupil expenditures in Florida, either because some counties may not desire to spend as much

Indeed, it has been noted that the economic burden of the average resident of a so-called rich school district may be greater than that of the average resident of a poor district, because he pays higher taxes in terms of gross dollars for his schools and, in addition, the cost of his child's education may be substantially reflected in the price of his home.[22]

2. The actual character of the alleged classification.

The three-judge District Court, relying upon the direction of the California Supreme Court in *Serrano v. Priest, supra* (337 F. Supp. 280, 281 n. 1),[23] and the line of U.S. Supreme Court criminal process and voting rights cases[24] recognized in *Hargrave v. McKinney,* 413 F.2d 320, 324 (5th Cir. 1969), (on remand, *Hargrave v. Kirk,* 313 F. Supp. 944 [M.D. Fla. 1970], vacated on other grounds sub nom., *Askew v. Hargrave,* 401 U.S. 476, 91 S.Ct. 856, 28 L.Ed.2d 196 [1971]), determined that the Texas school financing system involves a classification based upon "wealth." This classification, when affecting a "fundamental" interest, was held to require close judicial scrutiny of the financing system (337 F.Supp. 280, 282-283).

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as other counties on the education of their children, or because, in the poorer counties, they cannot. Plaintiffs do not contest the variations in per pupil expenditures from these causes, but only 'the unequal impediment placed on us by the state because we are "poor."' We consider this to be a fundamental distinction between the cases."

[22]Goldstein, App. A, pp. 48-49, n. 91.

[23]"Serrano convincingly analyzes discussions regarding the suspect nature of classifications based on wealth . . ." (337 F.Supp. at 281, n. 1.)

[24]*Harper v. Va. State Bd. of Elections; Douglas v. Calif.; Griffin v. Illinois, supra,* n. 18; *McDonald v. Bd. of Election Comm'rs.,* 394 U.S. 802, 22 L.Ed.2d 739, 89 S.Ct. 1404 (1969).

Apparently, the District Court found, as did *Serrano,* that the financing system classified *school districts* according to wealth, in that it permits "citizens of affluent districts to provide higher quality education for their children, while paying lower taxes, . . ." (337 F.Supp. 280, 285.)[25]

Professor Coons and associates freely concede that the "wealth" to which they refer in their simple formula is the wealth of school districts, and not the wealth of persons or families. They state:

> "We have noted at several points that, in the school finance issue, the poverty involved is always that of the district and only sometimes (though usually) that of the individual."[26]

Amici submit that the lower court's determination that the Texas financing system involved a suspect classification based upon "wealth" is incorrect because (a) the court erroneously relied upon the so-called "de facto wealth classification" cases decided by this Court,[27] (b) classification of school districts by wealth, if such a classification exists, does not constitute a

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[25]The District Court also noted an affidavit showing statistics concerning 110 of the State's 1,200 school districts and compared the median family incomes of families in the richest ten districts with those in the four poorest districts for the year 1960. Its conclusion that "those districts most rich in property also have the highest median family income and the lowest percentage of minority pupils, while the poor property districts are poor in income. . . ." (337 F.Sup. 282) is seriously questioned in Goldstein, App. A, pp. 33-34, wherein he notes that among the three groupings of the remaining 96 school districts the data even shows an inverse relationship between median family income and district tax base per pupil.

[26]Coons, et al., *Private Wealth and Public Education, supra,* p. 374.

[27]*Griffin v. Ill.,* 351 U.S. 12 (1956); *Douglas v. California,* 372 U.S. 353 (1963); *Harper v. State Bd. of Elections,* 383 U.S. 663 (1966).

classification of individuals by wealth, and (c) this Court has recently held that state legislation allegedly establishing a classification based upon wealth is not subject to close judicial scrutiny where the interest affected was housing or shelter.[28]

(a) The line of U.S. Supreme Court "de facto wealth classification" cases relied upon by the California Supreme Court in *Serrano* and the lower court in the instant case, all involved clear infringements of recognized fundamental *individual* interests. In *Harper v. Va. State Bd. of Elections,* 383 U.S. 663 (1966) the payment of a poll tax as a precondition to voting was invalidated because it conditioned an individual's right to vote on the payment of a fee. In *Griffin v. Illinois,* 351 U.S. 12 (1956) and *Douglas v. California,* 372 U.S. 353 (1963) states were precluded from requiring an indigent criminal defendant to pay for a transcript or an attorney for appeal, requirements which effectively barred such individuals from access to the full criminal judicial process.

That the Texas school financing legislation does not adversely affect an *individual's* interest in education, no matter how highly that interest is ranked, has previously been noted. Thus, it does not appear that any fundamental individual interest is affected by any wealth classification that is arguably embodied in the school financing scheme.

(b) Additionally, these cases all involved classifi-

[28] *James v. Valtierra,* 402 U.S. 137, 28 L.Ed.2d 678, 91 S.Ct. 1331 (1971).

cations which precluded *individuals* from exercising their rights to vote or to invoke the criminal judicial processes. The lower court in the instant case, like *Serrano,* essentially found that the financing system classifies *districts* by wealth. Thus, the system, if it can be deemed to classify at all, classifies *districts* and not individuals in that manner.

Thus, the rich person living in a poor school district is disadvantaged at least as much as a poor person in the same district, with respect to the local taxes imposed upon his property to finance his children's education. Similarly, the poor person living in a rich school district is advantaged at least as much as a rich person in the same district with respect to the school district tax rate. Therefore, what the court below and the California Supreme Court focused upon is not a classification of individuals by wealth, but the lack of uniformity in the burdens on taxpayers in the various school districts, regardless of differences in their individual wealth. That the financing system does not classify individuals by wealth and does not condition the ability to provide educational dollars on individual wealth is apparent.

In this connection, it is pertinent that intrastate or interdistrict territorial uniformity has not been held to be required under the Equal Protection Clause (*Salsburg v. Maryland,* 346 U.S. 545, 551-52, 98 L.Ed. 281, 74 S.Ct. 280 [1953]), except in cases involving racial discrimination, (see, e.g., *Griffin v. County School Board,* 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.

2d 256 [1964]), or effective impairment of the right to vote (e.g., *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 [1964]). It is apparent that if equality in school district tax bases is constitutionally required, then tax base equality would also be required for all taxes imposed by local entities which provide such services as public welfare, health services, police and fire protection, sewers, streets, drains, lighting, libraries, hospitals, parks and playgrounds. Obviously, such a rule of law would completely destroy the manifest benefits derived from delegation of taxing powers to cities, counties, school districts and special districts, and effectively destroy local government.

(c) Also, even assuming, arguendo, that the school finance system does classify individuals or districts by wealth, this Court's decision in *James v. Valtierra, supra,* 402 U.S. 137, 28 L.Ed.2d 678, 91 S.Ct. 1331, precludes application of the close scrutiny test on that basis alone.[29] It is more than apparent that the high premium placed upon community participation in decisions which may lead to large expenditures of local governmental funds is present in the area of education to at least the same extent it is present in low income housing.[30] Any disadvantage to a particular group which may result from the operation of the school financing system is certainly balanced by the values of

[29]The presence of a wealth classification in *James* is vigorously argued by Justice Marshall in his dissent in that case. (28 L.Ed.2d at 684-685.) The absence of wealth classification in the school finance system is discussed above.

[30]The attempt of state legislatures and local school boards to tackle the problems of education in an ad hoc manner are discussed below, together with the particular desirability of this approach in the field of education.

local autonomy and control of local educational policies and decisions.[31]

3. Societal or governmental interests supporting or affected by the Texas school finance system.

The policy reflected in the Texas school financing system, like California's, is to permit a high degree of local control and responsibility over the administration of the state's public schools and over the amount of money to be expended locally for public school education, while at the same time assuring essential educational financing for all who attend public schools. The dollar amount per pupil raised for educational purposes within any school district, over and above the state contribution, rests within the sound discretion of the local school district governing board and the voters of that district. (Texas Education Code §§20.01, et seq.; California Education Code §§20800, et seq.)

Thus, the aspect of the financing system which is attacked by Appellees can be seen to embody a singular devotion to democratic values and precepts in the administration and control of education. The number and

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[31]As stated by Mr. Justice Black in his majority opinion in *James*, 402 U.S. 137, 142, 28 L.Ed.2d 678, 683, 91 S.Ct. 1331:

> "The people of California have also decided by their own vote to require referendum approval of low-rent public housing projects. This procedure ensures that all the people of a community will have a voice in a decision which may lead to large expenditures of local governmental funds for increased public services and to lower tax revenues. It gives them a voice in decisions that will affect the future development of their own community. This procedure for democratic decision making does not violate the constitutional command that no State shall deny to any person 'the equal protection of the laws.'" [Footnotes omitted.]

complexity of the variables attendant to the administration and control of a local school district, most of which involve financial considerations, render such local fiscal autonomy in education essential, if not compelling. The variables to be evaluated and accommodated by local boards and the state legislature include statewide variations in costs and salaries, the relative efficiency of school districts, and the need for local innovation and experimentation to accommodate local needs or desires. The high, indeed fundamental, value placed upon democratic processes which permit all of the people of the community to have a voice in public policy decisions which may lead to increased expenditures of local governmental funds is well settled, and has recently been reaffirmed by this Court, (*James v. Valtierra,* 402 U.S. 137, 28 L.Ed.2d 678, 682-683, 91 S.Ct. 1331 (1971).) Adoption of the equal protection standard and rule urged by Appellees and adopted by the court below can only diminish the values of the democratic processes in educational matters by undercutting the responsibility and concomitant local spirit and interest which flow from local autonomy and control of educational programs and the amount of money to be expended on those programs.[32]

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[32]It seems apparent that if the spirit of local responsibility is weakened or destroyed, it may be difficult to revive. In tracing the history of local control and responsibility for education, Gordon C. Lee, in An Introduction to Education in Modern America, Henry Holt & Co., New York (1954) "Education and 'Grass Roots' Democracy: The Administration of Education at the Local Level," ch. 12, p. 207, has stated:

> "The trend today is decidedly in the direction of school district consolidation. Improved transportation has meant that schools could serve larger areas; the resultant combination of erstwhile independent school districts has meant the availability of more adequate resources for school support. However, even this seemingly altogether desirable reform is

One of the geniuses of the public school systems in America has been the ability of local school districts, whose residents desired and whose funds permitted, to experiment and innovate in finding solutions to educational problems, many of which were of purely local concern and others which were of universal application. The progress and achievements of the public education systems in this country since its founding speak for themselves. The incentive and leadership behind much of this progress has been the high motivation and performance of individual school districts which have undertaken innovative practices and proven or disproven reasonable educational theories. The performance and motivation of such school districts has been of benefit to all school districts.[33] A constitutional rule which would result in a general leveling of educational expenditures would effectively destroy the spirit and motivation of such districts and would eliminate one element of stimulating leadership in education which has existed since the inception of our public education systems.

Another governmental or societal interest which is unquestionably affected by the school finance legisla-

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accompanied by certain very real problems. The intimacy and warmth often characteristic of the smaller school are all too frequently missing in the larger schools. The close contact between school and community, and the resultant high degree of public interest, are difficult to retain as the district is enlarged. All of which indicates that the movement towards consolidation can be carried too far, to the point where the real and vital benefits of genuinely local responsibility are lost."

Diminution of the responsibility of local fiscal control would have much the same effect on local spirit and interest in education as school district consolidation, because limitation of local fiscal options will inevitably reduce local responsibility to determine educational priorities and the distribution of educational dollars.

[33]Mort, P., et al., *Public School Finance* (3rd ed., New York 1960).

tion in question is the interest of the state in treating individually the multitude of problems in the area of education. This Court has held that, in the area of economics and social legislation, a state may "address a problem 'one step at a time, or even select one phase of one field and apply a remedy there, neglecting the others.' *Williamson v. Lee Optical Co.,* 348 U.S. 483, 488, 99 L.Ed. 563, 572, 75 S.Ct. 461." *Dandridge v. Williams,* 397 U.S. 471, 484, 25 L.Ed.2d 491, 501, 90 S.Ct. 1153. See also *Jefferson v. Hackney,* 405 U.S. ....., 32 L.Ed.2d 285, 92 S.Ct. 1724.

The California Legislature, for example, has devoted considerable attention in recent years to special educational problems in such areas as programs for the physically handicapped, the mentally retarded, the educationally handicapped and for children with working parents. These programs have all involved categorical "excess-cost" state funding which the local districts may augment. Thus, it can be seen that the Legislature has been tackling the myriad problems in education on an individualized basis, problem by problem. The adoption of the constitutional rule urged by Appellees and adopted by the court below in this case would seriously jeopardize the efforts of state legislatures and local boards to tackle these particularized educational problems in such a manner.[84]

A further interest of society, and an individual in-

[84] The intent of the California Legislature to provide for local control and responsibility through the present financing system is set forth in its statement of purposes of the Foundation Program. See California Ed. Code §17300, pp. 44-47, infra.

terest of parents, which would be affected by affirmance of the rule adopted by the court below has recently been recognized and reaffirmed by this Court. This is the interest of the parent in being able to control his child's education and upbringing. The interest of the state in requiring universal compulsory public education has twice been held to yield to the interest of the parent in determining where and by whom his child should be educated and attempting to achieve the best education he can for his child. (*Pierce v. Society of Sisters,* 268 U.S. 510, 269 L.Ed. 1070, 45 S.Ct. 571 (1925); *Wisconsin v. Yoder,* 405 U.S. ....., 32 L.Ed. 2d 15, 92 S.Ct. 1526 (1972).) The constitutional rule urged by plaintiffs and adopted by the lower court, would effectively limit the opportunities within the public school system of a parent who desired to pay more for his child's education or to have an effective voice in the determination of the amount of funds to be expended on educational programs within his local school district.

4. Consequence of frustrating legislative and congressional attempts to promote educational opportunities.

In addition to the foregoing factors to be considered in determining the standard of review to be applied, we submit that it is highly relevant to consider the consequences which would flow from the standard of review adopted.

Thus, full consideraton should be given, in this case, to the impact upon the school financing system of imposing a constitutional "straitjacket" of close judicial scrutiny on legislative and congressional attempts to promote educational opportunities. Our concepts of educational services to be provided are by no means static; they are in this modern area undergoing revolutionary changes.[35]

There is room here for only two of numerous possibile examples. (For other examples of innovation, see those programs described in Footnote 40, infra, and on page 60 of text.) The State Superintendent of Public Instruction of the State of California is presently urging that the California Legislature adopt Senate Bill 1302 (Appendix C) which would provide "Early Childhood Education Programs," which would launch many pupils on their educational voyages at the age of three years and nine months. In an interview reported in a legal newspaper, The Los Angeles Daily

[35]See R. Butts & L. Cremin, *A History of Education in American Culture* (1953) L. Cremin, *The Transformation of the School* (1961), both cited in *Wisconsin v. Yoder*, 405 U.S. ....., 32 L.Ed.2d 15, 26, 92 S.Ct. 1526.

Journal, July 4, 1972, Superintendent Riles is quoted as follows:

> "Q. How are you planning to solve the problem of California's falling test scores?
>
> "A. One thing is our proposed early childhood program.
>
> "The essence of the program is to find out how to change the elementary grades to make sure the children are excited.
>
> "We'll try to individualize the programs. What you're talking about here is children with problems with language, or low-income children—any number of things, including the problems of gifted children. When you individualize his work, you give him the kind of work that will challenge him.
>
> "Another thing we're aiming at is to assure that every student will have one salable skill at the end of high school. We've had task forces on these things since early 1971."

The other example of striking educational innovation in-process is that of "career education." The official journal of the California School Boards Association, after describing U.S. Commissioner of Education, Sidney P. Marland, as "an outspoken advocate of reform in vocational education, states:

> "* * * He has announced that such reform will be one of a very few major priority areas for the Office of Education. Under his leadership, the federal government is financing research, leadership training, and exemplary programs, many of which, incidentally, are located in California.

"'Career education' is what Marland calls his proposal. What is career education anyway? Is it a fancier name for that rather shopworn commodity traditionally known as 'vocational training'? Emphatically not, according to Marland, who deplores the widespread tendency to divide curriculum and students into three traditional categories: college preparatory, vocational training, and general education. Career education would be a whole new scene; it would involve *every* student, regardless of academic ambition, and it would extend throughout a student's entire schooling, from kindergarten on. Instead of limited specific skills training, which has characterized so much of vocational education, it would introduce students to a more flexible and open-ended grouping skills.

"These skills are the fifteen occupational clusters illustrated in Figure 1 and identified in Figure 2. Each cluster has a whole range of occupational options, each of which offers a number of entry levels requiring varying degrees of skills and/or training. For example, in the health cluster there are such possibilities as accident prevention, pharmacology, medical and dental sciences, to name a few, and each of these areas may be entered from different stages of formal preparation. Open entry and exit from school to work and back again are important aspects of Marland's concept; persons are to be encouraged to check in and out of educational programs throughout their lives to upgrade their skills in a particular field or to retrain themselves for an entirely new career. Such career flexibility is crucial in a society as complex and technological as ours, as we have been pain-

fully learning in the past few years." ("California School Boards," July/August 1972, pp. 7-8.)

Thus, not only the techniques but basic concepts of education are in the process of rapid innovative changes. To subject to the "necessary to a compelling state interest" test legislative efforts to inaugurate such innovative programs in selected or less-than-all school districts of the state would, at best, stifle such efforts, and at worst, condemn them.

5. The ability of the courts to fashion and enforce fair and appropriate remedies.

As previously noted, to apply the "necessary to promote a compelling state interest" test to legislation is virtually to condemn that legislation. It thus becomes important to consider, among all the relevant factors in determining the proper standard of review, the ability of the courts to fashion and enforce fair and appropriate remedies with respect to the statutory provisions which would probably be invalidated under that standard of review.

Since amici are treating separately the question of the ability of the courts to fashion and enforce remedies with respect to the vastly complex and intricately interwoven legislation making up the Texas system of financing its public schools, we refer to Point III for the substance of these considerations which should be weighed by the courts as one of the factors in determining the standard of review to be applied here.

The lack of faith in the democratic electoral process demonstrated by the plaintiffs who initiate attacks such as this upon comprehensive school financing programs should not be shared by the courts. Professor Coons and his associates, in their blueprint for litigation attacking school financing systems such as this, consider and give short shrift to the feasibility of achieving their ends through established democratic processes.[36] This high Court on the other hand has expressed its great faith in the democratic electoral processes and has evidenced extreme solicitude for protection of the rights of people to vote, and for the right of voters to see that their votes are not diluted by means of any form of invidious discrimination, including discrimination on the basis of the individual's ability or even willingness to pay.[37]

D. Conclusion.

For the foregoing reasons it is respectfully submitted that this Court should consider all relevant factors and reasons in determining the highly important question of the standard of review to be applied to the complex system of laws whereby the State of Texas finances its public schools. We submit that a careful analysis of the alleged classification involved (wealth), the individual and societal or governmental interest involved (public education), the interrelationships be-

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[36]Coons, et al., *Private Wealth and Public Education*, Belknap Press of Harvard University Press (1970) pp. 287-289.

[37]*James v. Valtierra*, 402 U.S. 137 (1971); Bullock v. Carter, ... U.S. ....., 31 L.Ed.2d 92 (1972).

tween each basis for determining that the legislative classification is "suspect" and each basis for determining that the interests affected are "fundamental," the consequences for public education of applying a strict standard of judicial review, and the abilities of the courts to fashion and enforce fair and appropriate remedies, must lead inexorably to the conclusion that something less than the onerous "necessary to promote a compelling state interest" test be applied.

II

THE TEXAS SCHOOL FINANCING SYSTEM IS VALID UNDER ANY FAIRLY APPLICABLE STANDARD OF REVIEW.

The provision, administration and control of public education is undoubtedly one of the most complex, if not the most complex, set of problems of state and local governments, and increasingly, of the Congress of the United States.

In attempting to ascertain and accommodate the multitudinous and varying educational needs and desires of the people in the different regions and localities, the people of Texas, like the people of California, have devised a system of school financing which is designed to assure essential educational programs and opportunities to each child attending public schools within the state, while at the same time providing for and permitting a high degree of local control and responsibility over the administration of local schools

and over the amount of money to be raised and expended locally for educational programs.[38]

The desires of the people of California to assure essential educational programs and opportunities uniformly to all pupils and to assure local control of programs and expenditures is clearly reflected in the following legislative statement of principles and purposes of the Foundation Program:

> "It is the intent of the Legislature that the administration of the laws governing the financial support of the public school system in this State be conducted within the purview of the following principles and policies:
>
> "The system of public school support should be designed to strengthen and encourage local responsibility for control of public education. Local school districts should be so organized that they can facilitate the provision of full educational opportunities for all who attend the public schools. Local control is best accomplished by the development of strong, vigorous, and properly organized local school administrative units. It is the State's responsibility to create or facilitate the creation of local school districts of sufficient size to properly discharge local responsibilities and to spend the tax dollar effectively.
>
> "Effective local control requires that all local administrative units contribute to the support of school budgets in proportion to their respective abilities, and that all have such flexibility in their

[38]Texas Education Code §§16.01, et seq. and 20.01, et seq., California Education Code §§17651, et seq. and 20800, et seq.

taxing programs as will readily permit of progress in the improvement of the educational program. Effective local control requires a local taxing power, and a local tax base which is not unduly restricted or overburdened.

"The system of public school support should assure that state, local, and other funds are adequate for the support of a realistic foundation program. It is unrealistic and unfair to the less wealthy districts to provide for only a part of the financing necessary for an adequate educational program.

"The system of public school support should permit and encourage local school districts to provide and support improved district organization and educational programs. The system of public school support should prohibit the introduction of undesirable organization and educational practices, and should discourage any such practices now in effect. Improvement of programs in particular districts is in the interests of the State as a whole as well as of the people in individual districts, since the excellence of the programs in some districts will tend to bring about program improvement in other districts.

"The system of public school support should make provision for the apportionment of state funds to local school districts on a strictly objective basis that can be computed as well by the local districts as by the State. The principle of local responsibility requires that the granting of discretionary powers to state officials over the distribution of state aid and the granting to these officials of the power to impose undue restriction

on the use of funds and the conduct of educational programs at the local level be avoided.

"The system of public school support should effect a partnership between the State, the county and the local district, with each participating equitably in accordance with its relative ability. The respective abilities should be combined to provide a financial plan between the State and the local agencies known as the foundation program for public school support. Toward this foundation program, each county and district, through a uniform method should contribute in accordance with its true financial ability.

"The system of public school support should provide, through the foundation program, for essential educational opportunities for all who attend the public schools. Provision should be made in the foundation program for adequate financing of all educational services.

"The broader based taxing power of the State should be utilized to raise the level of financial support in the properly organized but financially weak districts of the State, thus contributing greatly to the equalization of educational opportunity for the students residing therein. It should also be used to provide a minimum amount of guaranteed support to all districts, for such state assistance serves to develop among all districts a sense of responsibility to the entire system of public education in the State. State assistance to all districts also would create a tax leeway for the exercise of local initiative." (California Education Code §17300.)

Thus, it can seen that the California Legislature has attempted to accommodate, through the Foundation Program, both the compelling interest of children in receiving essential educational opportunities and the compelling interests of parents in directing and controlling the education and upbringing of their children.

Just as the problems of the poor are complex, and states are given great leeway in discharging their "difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients,"[39] so the problems of all groups and individuals in education are even more complex, and state legislatures and local school boards should be allowed to adjust and solve the variant problems and allocate the limited funds for public education in the most democratic manner possible in order to accommodate local needs and desires for education services.

The problems of the poor in education are only one of the legion of educational problems faced by the legislature on a continuing basis. California, like Texas and other states, has specifically attacked the problems of poor and disadvantaged by providing compensatory education programs, which include special state funding.[40] Additionally, the people of California have as-

[39] *Jefferson v. Hackney*. 405 U.S. ....., ..., 32 L.Ed. 285, 299, 92 S.Ct. 1724 (1972).

[40] These programs include: crash programs in reading and mathematics—California Education Code §§6490-6498, special programs for mentally gifted minors from disadvantaged areas—§§6421-6434, and pre-school follow through programs—§§6499-6499.9; see generally, California Education Code §§6450, et seq.

sured essential levels of education to all children with other or additional specific educational problems.[41] A constitutional rule which would require a general leveling of educational expenditures, such as the rule adopted by the court below and the California Supreme Court in *Serrano v Priest, supra,* would undoubtedly infringe upon the abilities of the legislature and local school boards to accommodate the varied interests and needs of children and their parents in these special problem areas.[42]

Additionally, it should be pointed out that the Texas Legislature, in attempting to satisfy the compelling interest of the state in assuring essential educational programs for all children on a uniform basis, has taken into account the disparities in tax bases among the districts and attempted to equalize any concomitant variances in local abilities to support the foundation program and other programs by use of the "economic

[41]e.g., Programs for educationally handicapped minors, California Education Code §§6750-6753; mentally handicapped minors, §§6870-6874.6, 6920; mentally retarded minors, §§6901-6920; neurologically handicapped minors, §§26401-26404; orthopedically handicapped minors, §§894-894.4; physically handicapped minors, §§6801-6822; and vocational training and rehabilitation services, §§7001-7028. All these programs include special state funding while allowing local participation in the discretion of local school boards, dependent upon local needs and desires for such programs.

[42]For example, it is doubtful whether under the *Serrano-Rodriguez* rule, a local district with special needs and desires for deaf and hard-of-hearing classes could raise and expend, from local sources, whatever funds it felt were necessary or desirable to supplement basic state apportionments allowed for such classes. If such supplementation is not constitutionally permissible, the compelling interests of some parents in directing and controlling their children's education would be thwarted. If it is permissible, the rule makes no sense in that the citizens of one locality, whether due to differing desires or abilities to pay, or both, would be allowed to provide for higher expenditures (and under the assumption of the rule, a higher quality of education) in a particular educational area, to the disadvantage of the child with the same needs in a district where the school board does not choose to provide or supplement such a program.

index" (Texas Education Code §§16.74-16.78). California has similarly attempted to equalize any such disparities through equalization aid (California Education Code §§17901, 17902) and supplementary aid (§§17920-17926) to districts with lower property valuations.

In view of the apparent absence of a correlation between educational expenditures and educational outputs or the quality of education afforded,[43] the interests of the state in preserving its foundation program formulas and local district options would appear to be all the more compelling. The absence of evidence of such a correlation additionally increases the desirability of giving state legislatures and local school boards great leeyway in determining the formulas for allocation of educational funds, since those bodies are uniquely equipped to respond to the varying educational needs and their concomitant financing requirements on a continuing basis.[44]

The compelling interest of parents in directing and controlling the education and upbringing of their children has been recognized and recently reaffirmed by this Court. (*Pierce v. Sociey of Sisters, supra* (1925); *Wisconsin v. Yoder, supra* (1972).) The reality that pupils and parents in varying localities[45] have differing educational needs and desires strongly militates toward preservation of local control over local educa-

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[43]See notes 14 and 15 and accompanying text.

[44]See Argument III, infra.

[45]And within a sprawling urban-suburban area such as Los Angeles County.

tional programs and their concomitant fiscal allocations. The purpose reflected in the present financing system to permit the citizens of local districts to raise additional tax funds and expend them within the district for whatever government services they determine are needed has been wisely preserved and protected.[46] Allocation and expenditure of funds on educational programs, depending on the complex and varying needs and desires of parents and their children, including their needs or preferences for other governmental services, is largely a problem of parental choice.[47]

This interest of parents was also recognized by Mr. Justice Stewart in his majority opinion in *Wright v. Council of the City of Emporia,* 40 Law Week 4806, 4812:

> "Direct control over decisions vitally affecting the education of one's children is a need that is strongly felt in our society, . . . "

In that case, the City of Emporia's attempt to form a new and separate school system was found to be unacceptable not because creation of a separate system would result in a disparity in a racial balance between the city and county schools, but because the timing of the attempt indicated a clearly racial motive to impede the dismantling of a duel school system, pursuant to court order, under a plan which entities representing

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[46]See *General Am. Tank Car Corp. v. Day,* 270 U.S. 367, 70 L.Ed. 635, 46 S.Ct. 234 (1926); *Hess v. Mullaney* (9th Cir. 1954), 213 F.2d 635, cert. den. sub nom. *Hess v. Dewey* (1954), 348 U.S. 836, 99 L.Ed. 659, 75 S.Ct. 50; *Board of Ed. of Ind. Sch. Dist., 20, Muskogee v. State of Oklahoma,* 409 F.2d 665, 668 (10th Cir. 1969).

[47]Brest, Book Review, 23 Stanford L.Rev. 591, 596, 611-12 (1971).

two-thirds of the students affected had apparently accepted.[48] The Court recognized that absent such prohibited racial intent, the attempt to create a new school system would be acceptable.

> "Once the unitary system has been established and accepted, it may be that Emporia, if it still desires to do so, may establish an independent system without such an adverse effect upon the students remaining in the county, . . ." 40 Law Week at 4812.

In the instant case, the school finance system quite clearly does not reflect such an invidious motive, either on its face or as applied. Therefore, the values of parental choice in allocation and expenditure of educational funds would appear to be all the more compelling, and the finance system, inasmuch as it preserves and promotes such parental choice, certainly withstands constitutional scrutiny.

In its statement of principles and purposes of the Foundation Program, the California Legislature expressly recognized one of the paramount state interests reflected in the present financing systems, which was wholly ignored by the court below and the California Supreme Court in *Serrano v. Priest, supra*:

> "The system of public school support should permit and encourage local school districts to provide and support improved district organization and educational programs . . . . Improvement of programs in particular districts is in the interests

[48] 40 Law Week at 4811-4812.

of the State as a whole as well as of the people in individual districts, since the excellence of programs in some districts will tend to bring about program improvement in other districts." (California Education Code §17300.)

It has long been recognized that much of the remarkable progress and achievements of the American public school systems has resulted from the incentive and leadership of individual school districts which have undertaken innovative educational programs and, in the course of so doing, have proven or disproven reasonable educational theories. The opportunities for the people of a local school district to choose to establish and finance innovative programs are expressly promoted by the present financing systems.[49]

More basic, however, is the interest of the state, through the financing system, to permit districts with peculiar educational problems to accommodate the needs and desires of their students and parents in a democratic manner. School districts in urban areas must accommodate special educational needs which may not be a factor in suburban or rural districts. Some rural districts, likewise, must accommodate certain educational needs not prevalent in urban or suburban districts.

The State Legislatures of Texas and California have wisely recognized, in establishing and maintaining the present financing systems, that the people within

[49]Mort, P., et al. *Public School Finance*, 3rd Ed. (New York 1960) pp. 207, 213.

local school districts are uniquely equipped to consider the various factors involved in determining what educational programs are necessary and desirable for their particular district and in determining the level of expenditures for such programs. These various factors include:

1. The costs of continuing contractual commitments for educational services, such as teachers' salaries, which may vary widely from district to district.
2. The costs of other necessary and desired governmental services, such as police and fire protection, health and sanitation services, and other municipal services such as streets, drains and lighting.
3. The availability of federal funds for educational programs, which may relieve the pressures to allocate local funds to certain desirable educational programs.[50]
4. The interests of parents and students in continuity of educational programs within the district.
5. The shifting nature and composition of the district population and any concomitant changes

[50] The impact of federal funds on the abilities of local parents and taxpayers to choose the levels of support for educational programs they desire to provide was totally ignored by the court below and by the California Supreme Court in *Serrano v. Priest*. Both courts focused heavily upon tax rates and district expenditures and assessed valuations per pupil. This data, to be realistic, should include all federal funds distributed to the school districts in any consideration of disparities in school financing and expenditures. To do otherwise would be to require the state legislatures and local school boards to ignore the various federally-funded educational programs in all decisions concerning the level of funding for particular educational programs, a requirement which is obviously irrational. Additionally, large, tax-exempt property holdings within a particular district, such as church and government holdings, may significantly affect such data.

in their educational needs and desires. Large districts such as Los Angeles, for example, are experiencing significant changes due to redevelopment, resulting in increased assessed valuations, and a decline in pupil population.

6. The impact of private school attendance within the district, which affects the amount of state and local funds allocable per pupil and the incentive of many district residents to supplement the level of funding of public school educational programs.

These factors, in addition to innumerable others, must be considered and adjusted on a continuing basis by the state legislature and local school boards. The complex problems of education, on both a statewide level and even within a particular school district, can and do change rapidly. Any combination of factors, such as those noted above, may, in the best judgment of the people of a state or a local school district, call for the adoption of programs or procedures which operate to the disadvantage of some particular group or groups within the state or district. It will almost always be true that the state or the local school district could accomplish its particular goals and purposes by some other program or procedure which would be less onerous to the disadvantaged group. However, in the area of education, the problems are numerous and complex, and the populations of many districts contain many diverse and shifting groups. Under such circumstances, the Texas and California Legislature's deci-

sions to allow local choice in the adjustment and accommodation of these problems and groups is more than merely reasonable, it is compelling.

To require state and local legislative bodies, in all decisions concerning the adjustment and accommodation of educational problems, including funding, to determine and choose the least onerous means as to the interest of each group which may potentially be disadvantaged, is to require the unreasonable, if not the impossible. As Mr. Justice Black noted in his majority opinion in *James v. Valtierra,* upholding local referendum procedures for approval of low-income housing:

> "Under any such holding [requiring the State to choose the least onerous method of accomplishing its purposes if a particular group is disadvantaged by a state legislative scheme], presumably a State would not be able to require referendums on any subject unless referendums were required on all, because they would always disadvantage some group. And this Court would be required to analyze governmental structures to determine whether a gubernatorial veto provision or a filibuster rule is likely to 'disadvantage' any of the diverse and shifting groups that make up the American people." (*James v. Valtierra, supra,* 402 U.S. 137, 142, 28 L.Ed.2d 678, 683, 91 S.Ct. 1331.)

It is obvious that such a holding applied to the school finance system in the instant case would require the Court to analyze the governmental structures and procedures of state and local school districts concern-

ing all aspects of educational decision-making, a task for which courts are clearly ill-suited.

The lower courts in *McInnis v. Shapiro,* 293 F. Supp. 327 (N.D. Ill. 1968) aff'd sub nom, *McInnis v. Ogilvie,* 394 U.S. 322, 333 (1969) and *Burruss v. Wilkerson,* 310 F.Supp. 572, 574 (W.D. Va. 1969) aff'd 397 U.S. 44 (1970) both recognized the complexity of legislative decision-making in the field of education and educational finance. As the lower court in *McInnis* stated, quoting from *Metropolis Theatre Co. v. City of Chicago,* 228 U.S. 61, 69-70, 57 L.Ed. 730 (1913):

> " 'The problems of government are practical ones and may justify, if they do not require rough accommodations—illogical, it may be, and unscientific . . . . Mere errors of government are not subject to our judicial review.' " (293 F.Supp. at 333.)

A careful analysis of the complexities involved in legislative decision-making in the field of education clearly indicates that the decisions of Texas and California to permit local choice while assuring essential programs and levels of support on a uniform basis is neither illogical nor unscientific. Rather, it represents a devotion to democracy and a historical and common sense recognition that decisions concerning distribution of governmental services in such a complex and changing area should be made at the local level in the most democratic manner possible. To hold that the mere involvement of the state in the provision of such governmental services requires that all such services

must be distributed equally or in a manner devoid of aspects of localized pricing mechanisms would inevitably require wholesale restructuring of all governmental institutions.[51]

Indeed, all of the arguments made by plaintiffs in the instant case, including those concerning the applicable standard of equal protection review, the alleged availability of less onerous alternatives, and the alleged availability of judicially manageable standards were presented to this Court in the jurisdictional statements and various amici briefs filed in the *McInnis* and *Burruss* cases. By its summary affirmance in those cases, this Court rejected plaintiffs' contentions, wisely recognizing the complexity of educational finance legislation and the desirability of permitting local choice in such matters. This Court has consistently afforded state legislatures special freedom in the area of taxation classifications.

> "The broad discretion as to classification possessed by a legislature in the field of taxation has long been recognized. This Court fifty years ago concluded that 'the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation,' and the passage of time has only served to underscore the wisdom of that recognition of the large area of discretion which is needed by a legislature in formulating sound tax policies. Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution

[51] Brest, Book Review, 23 Stanford L.Rev. 591, 599-600 (1971).

of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." [Footnotes omitted; *Madden v. Kentucky,* 309 U.S. 83, 87-88, 84 L.Ed. 590, 593 (1939).]

The constitutional rule urged by plaintiffs and appellees herein and adopted by the court below and by the California Supreme Court in *Serrano v. Priest,* can only result in an irrational upward or downward leveling of educational expenditures resulting in increased tax burdens and artificial uniformity in educational programs. The compelling wisdom of permitting local choice in the adjustment of complex educational problems must necessarily be ignored if such a constitutional rule is to become the law of this land.

III

THE MONUMENTAL TASK OF MORE FAIRLY ALLOCATING FINANCIAL RESOURCES TO SCHOOL DISTRICTS IS PROPERLY A FUNCTION TO BE EXERCISED BY THE STATE LEGISLATURE AND THE CONGRESS, AND NOT BY THE COURTS.

The exceedingly intricate and complex problems which would be faced by the courts were they to take unto themselves the Herculean task of more fairly allocating a state's available financial resources among its school districts, requires the conclusion that the courts should leave these problems in the hands of those equipped to deal with them: the State Legislatures, Governors, school boards, the United States Congress and the President.

A brief summary of the difficulties involved should suffice to demonstrate that the courts are not equipped to deal with these problems.

Differences in Status Quo

How would the courts alleviate the consequences of presently existing differences in situations among the various school districts of a single state? Take, for example, the consequences of some districts having old buildings requiring repair or replacement, with inadequate playgrounds, as compared with districts having new buildings with adequate playgrounds. What about the same differences within the same school district, such as the large Los Angeles Unified School District

with old buildings in the central core and new buildings near its perimeter resulting from newcomers settling farther and farther from the central city? What about differences in the levels of bonded indebtedness among the districts, the differences in existing contractual commitments, salary schedules, commitments made by school staff in reliance on such salary schedules, differences among districts in average salaries because of differences of positions on graduated salary schedules, and differences in programs among districts, such as adult education, vocational education, lunch programs, and culturally disadvantaged programs? Are the courts in fact equipped to equitably alleviate the consequences of such differences in the present situations of the numerous school districts of a state?

Allowing for Differences in Educational Needs

Are the courts equipped to make equitable allowances for the differences in educational needs of the pupils of a state? Plaintiffs concede that such differences exist, but contend that their simple formula permits making appropriate allowances therefor. However, they fail to point out how the courts are equipped to equitably deal with them. Surely, the state legislatures and the Congress are far better equipped to deal with these problems than are the courts. We note the following examples of particular educational programs adopted in California which indicate legislative attempts to deal with special problems of pupils on an individual basis. For culturally disadvantaged minors, the California Legislature has adopted:

(1) Crash programs in reading and mathematics (California Education Code [hereinafter Ed. C.] §§ 6490-6498).

(2) Special programs for mentally gifted minors from disadvantaged areas (Ed.C. §§6421-6434).

(3) Pre-school follow-through programs (Ed.C. §§6499-6499.9).

Other special programs adopted by the California Legislature include:

(1) Educationally handicapped minors (Ed.C. §§6750-6753).

(2) Mentally handicapped minors (Ed.C. §§6870-6874.6, 6920).

(3) Mentally retarded minors (Ed.C. §§6901-6920).

(4) Neurologically handicapped minors (Ed.C. §§26401-26404).

(5) Orthopedically handicapped minors (Ed.C. §§ 894-894.4)

(6) Physically handicapped minors (Ed.C. §§6801-6822).

(7) Vocational training and rehabilitation services (Ed.C. §§7001-7028).

Even if it is granted that the courts, like the Legislature, may make appropriate allowances for such programs, on what basis would the courts, from year to year, determine *how much* allowance should be made

for each such program, where such programs should be located and what differential should be allowed to account for differences in costs, etc. arising by reason of their location in remote rural areas as compared with urban or suburban areas?

Allowing for Differences in Costs

Are the courts in fact equipped to allow for differences in prevailing salaries in the various geographical areas of the state, for differences in costs of land acquisition and construction of buildings, for differences in the efficiencies among school districts, because of differences in size or other factors, in such matters as administration, supervision, and purchasing?

Allowing for Federal Grants and Private Gifts

Are the courts equipped to make appropriate allowances for funds available to school districts through Federal grants and private gifts? The court below noted "a series of decisions prohibiting deductions from state aid to districts receiving 'impacted area' aid." (337 F.Supp. 280, 285.) And, how would the courts allow for differences among school districts in amounts received by way of private gift?

Allowing for Differential Services Rendered by State and Intermediate Educational Units

How would the courts make appropriate allowances in allocating funds among the districts for differences from county to county and from district to district in the amount of services rendered by such intermediate governmental units as the Office of the County Superintendent of Schools in California?

The California Legislature has provided that the County Superintendent of Schools may, and in many instances must, provide various services implementing those provided by school districts. These include special education program coordination, supervision of instruction, attendance and health services, provision of guidance, library, and audio-visual services, and provision of programs for education of the physically handicapped and mentally retarded (Ed.C. §§885-896).

The State Department of Education of California is authorized to engage in various programs and projects, some of which are to be on a pilot project basis, in order to carry out the declared legislative intent "to foster innovation and creative change in education, based on research and proven need" and to "join together the United States Office of Education, the State of California, and local school system to bring purposeful change and experimentation to schools throughout the state, through the use of all available resources of the state." (Ed.C. §575) The scope of the activity authorized by the Legislature to be performed at the

state level may be indicated by the following articles of the California Education Code, contained in Chapter 6 entitled:

"ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 AND EDUCATIONAL RESEARCH

Article		Section
1.	General Provisions	575
2.	Educational Innovation Advisory Commission	576
3.	Special Educational Projects	589
4.	Supplementary Educational Centers	590
5.	Experimental, Demonstration, and Operational Projects	591
6.	Evaluation of Projects	592
7.	Incentive Grants	593"

Allowing For Innovation on "Pilot Project" Basis

How are the courts to make appropriate provision for innovation of new educational programs, where there is a need for testing the efficacy of these programs before it is feasible to launch them in all school districts of the state? Would the courts be acting within the proper sphere of their functions were they to institute such innovative programs on pilot bases? See Senate Bill 1302 attached hereto as Appendix C providing for the innovative "Early Childhood Educational Program" to show the extreme complexities in which the Legislature must become involved in order to pro-

vide for an innovative program, and the requirement or ability to tap vast sums of public funds in order to fund such a program. If this is too much for the courts to accomplish, and if under the court's order the Legislature may not provide for innovative programs, does not the court order deprive the school districts of the state, and by extension the nation, of the benefits to be derived from learning the results and operating technique of such programs?

The plaintiffs have placed the courts in a dilemma. The more simple the rule which might be adopted by the court, the less it would provide for alleviation of the consequences of the wide variety of differences in the educational needs and desires of the millions of students to be affected, and of the consequences of differences in local situations. To adopt a simple rule would be to cast the children of a state from a single mold leading us to fulfillment of the dire predictions in Orwell's "1984."

The more complex the rule, to make provision for alleviation of the consequences of such differences, is to place an impossible on-going task upon the courts—a task with which the state legislatures, the Congress, and the various executive and administrative agencies created by them, are continuing to grapple, using vast sums of money in support of those efforts.[52] For example, are the courts prepared to fashion remedies which

[52]The National Education Finance Project initiated by the United States Office of Education in 1968 resulting in the oft-quoted publications of which "Alternative Programs for Financing Education" Vol. 5 is but one. was funded for approximately $2,000,000. *Id.* p. vii.

even remotely approach the complexities of A.B. 1283 (Appendix B) presently pending before the California Legislature in apparent response to the *Serrano* decision?

The problems involved here are well illustrated by the order of the District Court below, in which the Court simply restrains the defendants from giving any effect to the existing financing laws of the State of Texas "insofar as they discriminate against plaintiffs and others on the basis of wealth other than the wealth of the state as a whole" and orders them to "reallocate the funds available for financial support of the school system * * * in such a manner as not to violate the equal protection provisions of both the United States and Texas Constitutions." The Court stayed its order for a period of two years "in order to afford the defendant and the Legislature an opportunity to take all steps reasonably feasible to make the school system comply with the applicable law." (337 F.Supp. 280, 286.)

If the Legislature should fail to comply within that period of time, the question arises, how would the court itself fashion and enforce a remedy which would comply with the rule embodied in the order, while at the same time "equalizing educational opportunities" by taking into account, not all of the considerations noted above, but simply the most important of those considerations? How would the court see to it that the funds required to implement its ultimate order are made available? How would the courts manage to ac-

complish this each fiscal year in an era of rapidly changing educational concepts? The problems of providing educational funds are inextricably intertwined with the problems of raising the necessary funds through taxation.[58]

It must be recognized that the problems faced here are far more difficult that those involved in the reapportionment and desegregation cases—those problems are mere "child's play" by comparison.

The courts are not the proper forums in which to hammer out solutions to these intricate problems. As pointed out by Professor Kurland:

> "When Edward H. Levi, in his talk at the dedication of the new Earl Warren Legal Center at Berkeley, mentioned the problem with which we are concerned here, he said that the proper forum for finding a solution was not a conference but a research center. He was, of course, right, that conferences do not supply solutions for such basic problems. But the same reason that makes it unlikely that a conference will provide solutions makes it unlikely, even Mr. Levi to the contrary notwithstanding, the judiciary is going to afford an answer. And my third point of difficulty with the suggested constitutional doctrine of equality of educational opportunity is that the Supreme Court is the wrong forum for providing a solution. But I must warn you against my personal bias. Mr. Levi finds the 'accomplishment [of the Su-

[58]The "power equalizing" concept offered by Coons by way of token concession to the concept of local decision-making demonstrates plaintiffs' acknowledgment of the close relationship between allocating educational funds and problems of taxation. J. Coons, W. Clune & Sugarman, "Private Wealth and Public Education," pp. 14-15 (1970).

> preme Court . . . awesome.' I find it awful. But even he conceded 'that many of the decisions point directions for work which cannot be accomplished by the Court itself.' Let me suggest some reasons why I think this would be one of the problems that the Court should leave to others—at least for some time longer—to bring to solution.'"[54]

Professor Kurland goes on to point out that "the ingredients for success of any fundamental decision based on the equal protection clause are three, at least two of which must be present each time for the Court's will to prevail beyond its effect on the immediate parties to the lawsuit. The first requirement is that the constitutional standard be a simple one. The second is that the judiciary have adequate control over the means of effectuating enforcement. The third is that the public acquiesce—there is no need for agreement, simply the absence of opposition—in the principle and its application.'"[55]

Professor Kurland appears to concede that the rule urged by Professor Coons and adopted by *Serrano* and the District Court below, is a simple one, thus satisfying the first of his three requirements. Although amici agree that in its formulation, the rule is simple enough, we submit that its apparent simplicity is highly misleading. The first term in the formula, "the quality of public education," is itself so complex as to have

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[54]Kurland, "Equal Educational Opportunity: The Limits of Constiututional Jurisprudence Undefined," 35 Univ. of Chicago L. Rev. 583, 592 (1968). (Footnotes omitted.)

[55]Kurland, *supra*, footnote 54, p. 592.

defied the best efforts of professional educators to the present day and for the foreseeable future. Plaintiffs persuaded the *Serrano* court and the District Court below that they had avoided the pitfall of "lack of judicially manageable standards" by transforming their original demand that the courts enforce "equality of educational opportunities" into the formula "the quality of public education shall not be a function of wealth other than the wealth of the State as a whole." But, it is patently evident that they have not avoided that pitfall since they utilized in their new formulation the initial term "quality of public education" rather than some term such as "expenditures per pupil." Plaintiffs' formulation does not embody the simple rule "one scholar, one dollar," inasmuch as they acknowledge and allege that different students have different educational needs requiring differential expenditures. Plaintiffs are still asking the courts to oversee "the quality of education," not merely to equalize expenditures per pupil, and in doing so, they ask the courts to perform the impossible, as was recognized in *McInnis v. Shapiro,* 293 F.Supp. 327 (N.D. Ill. 1968)[56] and *Burruss v. Wilkerson,* 310 F.Supp. 572 (W.D. Va. 1969).[57]

In further response to Professor Levi's statement that the proper forum for finding a solution to these problems is not a conference but a research center, amici suggest that indeed extensive on-going research

[56]Aff'd, sub nom. *McInnis v. Ogilvie,* 394 U.S. 322 (1969).
[57]Aff'd 397 U.S. 44 (1970).

is required in the vital field of providing quality educational opportunities to the children of the state, and that such research should be conducted in an atmosphere involving well intentioned educational and fiscal experts working together toward common goals, rather than vying with each other in adversary court proceedings.[88]

An adverse consequence of the courts themselves undertaking the resolution of these problems of staggering magnitude would be the absolving of the state legislatures and Congress of this responsibility with the further consequence that the vast resources available to those legislatives bodies would not be utilized.

A further adverse consequence, should the Congress and the legislatures nevertheless continue to exercise responsibility, would be the extreme uncertainty of the constitutional validity of each of their laws and regulations were the "necessary to promote a compelling state interest" test be made applicable thereto by this high Court.

Although it may be imagined that a well-intentioned mastermind with powerful computers at his disposal and the power of the state behind him could solve the problems of public education in a more equi-

[88]Logically all other governmental services, with perhaps the exception of certain minor ones, would be subject to the *Serrano* rule. If the courts are to involve themselves in all these multitudinous problems assuring themselves that the quality of such governmental services are not to be a function of wealth other than the wealth of the State as a whole, the courts would be undertaking to themselves the impossible burdens of running the State and local governments, and would thereby be failing to give appropriate deference to the democratic ideas upon which this nation is founded and to the social values involved in the striving of communities for excellence and individualism.

table manner than the legislatures and the Congress have heretofore done, utilizing such means would not comport with the genius of this nation—democracy, nor with our concepts of the rights of our people to pursue individualism[59] and excellence.[60]

Professor Coons and associates, after outlining five strategies which might be used in attacking public school financing systems in the courts, gather them together as follows:

> "An Eclectic Approach. The disadvantages of these action-oriented t a c t i c s can be diminished without losing any advantages. What the child really seeks is a fair hearing on the merits of the constitutional issue, plus a declaration of principle, and the broadest possible freedom for the judge to coax and impel the legislature to a relevant response. On the whole, the approach that will most often serve these needs best is an action for a declaratory judgment naming as defendants state and county officials—and perhaps district boards and superintendents—who have the duty and power to collect the tax or spend for public education. Such a forum can produce a judgment upon the constitutionality of the whole package of laws.
>
> "Furthermore, having declared the system invalid, no immediate action would be required of the court. It could, as in Brown, wait a period to consider the remedy or await legislative reprise;

[59]Wisconsin v. Yoder, 405 U.S. ....., 32 L.Ed. 2d 15, 92 S.Ct. 1526 (1972).
[60]Kurland's Article at p. 591, J. Garner, Excellence: Can We Be Equal and Excellent Too? (1961).

this would be especially appropriate in a case where an intervening legislative session could address the question of the proper state response. All the political forces could participate in the remodeling of the state scheme while the court retained jurisdiction and awaited local developments. If the state did not respond in an acceptable fashion, the court could proceed by stages on motion of individual plaintiffs to excuse students from the duty of attendance, order admission in other districts, possibly award money compensation, begin to impound and then to redistribute equalization and flat funds, and then tie up the money of the richer districts. Before the court would shut down the entire system, use its contempt power, or raise taxes, it could even take a leaf from the book of reapportionment by hiring the computer expert who would assist the court in redrafting school districts to produce a uniform wealth base for each.'"[61]

In sum, the courts are not equipped to resolve the intricate multi-faceted problems involved in pursuing the ideal of providing high quality education to all the pupils of a state; these problems must be left to the legislatures and the Congress with the faith that, with all their imperfections, they will represent the will of the people of this country to zealously and diligently pursue that ideal.

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[61]Coons, et al., "Private Wealth and Public Education," *supra*, Chapter 12, "Conclusion: "Tactics and Politics," pp. 447-448. (Footnotes omitted.)

IV

THE JUDGMENT BELOW SHOULD BE REVERSED BECAUSE THE ORDER GRANTING THE INJUNCTION LACKS SPECIFICITY AND FAILS TO DESCRIBE IN REASONABLE DETAIL THE ACTS SOUGHT TO BE RESTRAINED AND BECAUSE OF ABSENCE OF INDISPENSABLE PARTIES.

Lack of Specificity

The Order of the Court below orders that:

> "(1) The defendants and each of them be preliminarily and permanently restrained and enjoined from giving any force and effect to the operation of said Article 7, § 3 of the Texas Constitution, and the sections of the Texas Education Code relating to the financing of education, including the Minimum Foundation School Program Act, insofar as they discriminate against plaintiffs and others on the basis of wealth other than the wealth of the State as a whole, and that defendants, the Commissioner of Education and the members of the State Board of Education, and each of them, be ordered to reallocate the funds available for financial support of the school system, including, without limitation, funds derived from taxation of real property by school districts, and to otherwise restructure the financial system in such a manner as not to violate the equal protection provisions of both the United States and Texas Constitutions; * * * " (337 F.Supp. 280, 285-286.)

The court went on to order that this mandate be

stayed "for a period of two years in order to afford the defendants and the Legislature an opportunity to take all steps reasonably feasible to make the school system comply with the applicable law; * * *." (337 F.Supp. 280, 286.)

In a recent case decided by this Court, *Gunn v. University Committee to End the War in Vietnam,* 399 U.S. 383, 386, 26 L.Ed.2d 684, 687, 90 S.Ct. 2013 (1970), the three-judge District Court below had rendered an opinion concluding with the following paragraph:

> "'We reach the conclusion that Article 474 is impermissibly and unconstitutionally broad. The Plaintiffs herein are entitled to their declaratory judgment to that effect, and to injunctive relief against the enforcement of Article 474 as now worded, insofar as it may affect rights guaranteed under the First Amendment. However, it is the Order of this Court that the mandate shall be stayed and this Court shall retain jurisdiction of the cause pending the next session, special or general, of the Texas legislature, at which time the State of Texas may, if it so desires, enact such disturbing-the-peace statute as will meet constitutional requirments.' 289 F. Supp. at 475."

The similarity between the language of this paragraph and the order here in question is readily apparent.

In *Gunn* this Court dismissed the direct appeal for want of jurisdiction on the ground that there was no

order of any kind either granting or denying an injunction, interlocutory or permanent, as required by 28 U.S.C. §1253.

This Court pointed out that its dismissal of the appeal was not based on a mere technicality that the basic reason for the limitations in 28 U.S.C. §1253 upon this Court's power of review is that until a district court issues an injunction, or enters an order denying one, it is not possible to know with any certainty what the lower court has decided.

This Court went on to state:

> "Rule 65(d) of the Federal Rules of Civil Procedure provides that any order granting an injunction 'shall be specific in terms' and 'shall describe in reasonable detail . . . the act or acts sought to be restrained.'
>
> "As we pointed out in International Longshoremen's Assn. v. Philadelphia Marine Trade Assn. 389 U.S. 64, 74, 19 L.Ed. 2d 236, 244, 88 S.Ct. 201, the 'Rule . . . was designed to prevent precisely the sort of confusion with which this District Court clouded its command.' An injunctive order is an extraordinary writ, enforceable by the power of contempt. 'The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid.' Id., at 76, 19 L.Ed. 2d at 245.

"That requirement is essential in cases where private conduct is sought to be enjoined, as we held in the Longshoremen's case. It is absolutely vital in a case where a federal court is asked to nullify a law duly enacted by a sovereign State. Cf. *Watson v. Buck*, 313 U.S. 387, 85 L.Ed. 1416, 61 S.Ct. 962, 136 ALR 1426."

This Court pointed out that failure of the District Court to follow up its opinion with an injunction was an unfortunate result at best, for if confronted with such an opinion by a federal court, state officials would no doubt hesitate long before disregarding it.

It is submitted that when the District Court does follow up its opinion with an order granting a mandatory injunction, as in the case at bar, but where the injunction lacks specificity and fails to describe in reasonable detail what the defendants must do, the result is even more unfortunate because state officials would no doubt face an even more serious dilemma inasmuch as the purportedly valid injunctive order would appear to them to be enforceable by the power of contempt.

It appears to be patent on its face that the order of the District Court below, requiring certain of the defendants to restructure the financial system "in such a manner as not to violate the equal protection provisions of both the United States and Texas Constitutions," fails to satisfy the standards established by Rule 65(d) of the Federal Rules of Civil Procedure. In *Swift & Company v. United States*, 196 U.S. 375,

396, 49 L.Ed. 518, 524, 25 S.Ct. 276 (1904) Justice Holmes, in reviewing an injunctive order under the Sherman Antitrust Act, stated:

> "The [Sherman Antitrust] law has been upheld and therefore we are bound to enforce it notwithstanding these difficulties. On the other hand, we equally are bound, by the first principles of justice, not to sanction a decree so vague as to put the whole conduct of the defendants' business at the peril of a summons for contempt. We cannot issue a general injunction against all possible breaches of the law. We must steer between these opposite difficulties if we can."

It further appears that mandatory injunctions should be made especially clear.

As stated in *National Labor Relations Board v. Bell Oil & Gas Co.* (C.C.A. 5th, 1938) 98 Fed.2d 405 at 406-407:

> "Mandatory injunctions should be clear, direct and unequivocal. They should not be hedged about by conditions and qualifications which cannot be performed or which may be confusing to one of ordinary intelligence. If placed in a dilemma by an ambiguous order, one who acts in good faith and with due respect to the court is not guilty of contempt."

Since the complexities involved in the subject matter of this case are such as to clearly demonstrate that this Court is in no position to redraft the order of injunction so as to meet the requirements of Rule 65(d)

of the Federal Rules of Civil Procedure, it is respectfully submitted that the judgment must be reversed.

Lack of Indispensable Parties

Plaintiffs did not include among the defendants either the State Legislature, which adopted the school financing laws in question, and which has the power to change them, nor the Governor, whose power of approval and of veto can determine whether legislative enactments go into effect.

Rule 65(d) of the Rules of Federal Procedure also provides:

> "Every order granting an injunction * * * is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise."

As pointed out in *Thaxton v. Vaughan* (4th Cir., 1963) 321 F.2d 474, 478, no valid decree may be entered in the absence of parties necessary to carry out the terms of the decree.

Professor Coons and his associates considered this problem as follows:

> "In this form of litigation the proper defendant is again difficult to identify. All the relief sought is beyond the power of any agent of the state operating under the existing state law. The real target is the legislature in all these cases but even

more directly here. Perhaps the legislature should be named defendant as it was in the *Colorado Assembly case.* (Lucas v. Forty-fourth General Assembly, 377 U.S. 713 (1964).) The problem is that in reapportionment there was, at least in theory, a *duty* of the legislature to act; here there seems no duty, for public education is concededly not a right. Yet there is at least this right, that public education be either validly structured or abolished. (The thought is reminiscent of the prescription of *Brown v. Board of Education,* 347 U.S. 483 (1954), which passed no judgment upon the right to an education, but only upon the right to its dispensation without racial segregation.) Seemingly the state legislature has a duty to do one or the other which would render it the proper defendant. Even if such a duty exists, however, the inclusion of the legislature as a party is awkward and undesirable unless it is clearly necessary.'"[62]

Accordingly, the failure of the plaintiffs to include among the defendants the Legislature and the Governor should require a reversal. Perhaps it would be necessary to also include all school districts which would be adversely affected by the carrying out of the court's injunctive decree.

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[62]Coons, et al., Private Wealth and Public Education, supra, p. 445.

CONCLUSION

For the forgoing reasons amici respectfully submit that the judgment of the District Court below should be reversed with directions that the case be dismissed.

Respectfully submitted,

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APPENDIX "A"

INTERDISTRICT INEQUALITIES IN SCHOOL FINANCING: A CRITICAL ANALYSIS OF *SERRANO v. PRIEST* AND ITS PROGENY.

STEPHEN R. GOLDSTEIN †

Rarely has a state supreme court decision received such extensive publicity and public comment as the recent California Supreme Court opinion in *Serrano v. Priest*,[1] concerning the constitutionality of interdistrict disparities in financing California public school districts. Indeed, one might have to go back to the United States Supreme Court reapportionment cases to find a decision of any court that has been as extensively discussed in the press as has *Serrano*. Most significantly, the press comment seems to have been uniformly affirmative. The *Serrano* result has been popularly hailed as rightly egalitarian and a significant, if not the significant, step in the struggle for better education in urban areas.[2] Even those editorial writers who have traditionally been proponents of judicial restraint have refrained from commenting adversely upon the court's decision invalidating California's public school financing system.

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[1] 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971).

[2] *See, e.g.*, N.Y. Times, Sept. 1, 1971, at 17, col. 1; *id.*, Sept. 2, 1971, at 32, col. 1; at 55, cols. 1, 2; *id.*, Sept. 5, 1971, § 4, at 7, col. 1; at 10, col.3.

In part this absence of adverse comment may be attributable to the fact that it was the California Supreme Court and not the United States Supreme Court that decided the case. Yet, the decision's impact is clearly not confined to California. The California school finance system is similar in effect to the systems used in 49 of the 50 states,[3] and the court avowedly rested its decision on federal equal protection grounds.[4]

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[3]Hawaii is the only state without local school district control of education. HAWAII REV. LAWS §§296-2, 298-2 (1968).

[4]The court specifically rejected the argument that the California financing system violated art. IX, §5 of the California Constitution, which provides for "a system of common schools." It then stated: "Having disposed of these preliminary matters, we take up the chief contention underlying plaintiffs' complaint, namely that the California public school financing scheme violates the equal protection clause of the Fourteenth Amendment to the United States Constitution." 5 Cal. 3d at 596, 487 P.2d at 1249, 96 Cal. Rptr. at 609. Despite having thus based its decision on federal constitutional grounds, the court, in a puzzling footnote, *id.* at 596 n.11, 487 P.2d at 1249 n.11, 96 Cal. Rptr. at 609 n.11, then referred to 2 provisions of the California Constitution requiring that "[a]ll laws of a general nature shall have a uniform operation," CAL. CONST. art. I, §11, and prohibiting "special privileges or immunities," *id.* art. I, §21. The court went on to state that:

> We have construed these provisions as "substantially the equivalent" of the equal protection clause of the Fourteenth Amendment to the Federal Constitution. (Dept. of Mental Hygiene v. Kirchner (1965) 62 Cal. 2d 586, 588, 43 Cal. Rptr. 329, 400 P.2d 321.) Consequently, our analysis of plaintiffs' equal protection contention is also applicable to their claim under these state constitutional provisions.

Id.

Following this, there was no further mention of the California Constitution in the opinion and almost all authorities cited concern federal law. The court also devoted considerable effort to avoiding the argument that the federal constitutional issues has been foreclosed by the United States Supreme Court summary affirmances in McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd mem. sub nom.* McInnis v. Ogilvie, 394 U.S. 322 (1969), and Burruss v. Wilkerson, 310 F. Supp. 572 (W.D. Va. 1969), *aff'd mem.*, 397 U.S. 44 (1970). The California Supreme Court, of course, would not be limited by a United States Supreme Court interpretation of the California Constitution.

The footnote quoted above, and the explicit citation to *Kirchner*, however, raise the issue whether, despite its express reliance on the Federal Constitution, the court has not also relied on the California Constitution in a way that precludes United States Supreme Court review.

In *Kirchner*, the Califoria Supreme Court held unconstitutional a state statute relating to liability for the care and maintenance of mentally ill persons in state institutions. 60 Cal. 2d 716, 388 P.2d 720, 36 Cal. Rptr. 488 (1964). The United States Supreme Court granted certiorari but vacated and remanded the case to the California court on the grounds that the California opinoin was unclear as to whether it was based on the federal or state

It has also been expressly followed by a federal district court in Minnesota in denying a motion to dismiss[5] and by a three-judge district court in Texas in holding that state's financing scheme unconstitutional.[6] While it is clear, at least at this time, that the *Serrano* decision itself will not be reviewed by the United States Supreme Court,[7] there are many other interdistrict

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consitutions or both, and that the United States Supreme Court would not have jurisdiction unless the federal Constitution had been the sole basis for the decision, or the state constitution had been interpreted under what the California court deemed the compulsion of the Federal Constitution. 380 U.S. 194 (1965). On remand, the California Supreme Court stated that although CAL. CONST. art I, §§11 & 21 were generally thought to be "substantially the equivalent" of the federal aqual protection clause, the court was "independently constrained" in its result by these sections of the state constitution. The court stated that it had not acted "solely by compulsion of the Fourteenth Amendment, either directly or in construing or applying state law . . . ." 62 Cal. 2d 586, 588, 400 P.2d 321, 322, 43 Cal. Rptr. 329, 330 (1965).

Although the issue is not completely free from doubt, the California Supreme Court in *Serrano* may have written an opinion expressly based on federal law yet at the same time insulated from review by the United States Supreme Court.

[5]Van Dusartz v. Hatfield, 334 F. Supp. 870 (D. Minn. 1971).

[6]Rodriguez v. San Antonio Ind. School Dist., 337 F. Supp. 280 (W.D. Tex. 1971). Procedurally, *Rodriguez* has developed further than *Serrano*, as the court there, after a hearing, declared the Texas financing scheme unconstitutional and permanently enjoined the defendants, the State Commissioner of Education, and the members of the State Board of Education, from enforcing it. The court, however, stayed its mandate and retained jurisdiction for 2 years:

> in order to afford the defendants and the Legislature an opportunity to take all steps reasonably feasible to make the school system comply with the applicable law . . . .
>
> . . . .
>
> The Court retains jurisdiction of this action to take such further steps as may be necessary to implement both the purpose and spirit of this order, in the event the Legislature fails to act within the time stated . . . .

Id. at 286. For retention of jurisdiction the court cited cases of judicially imposed reapportionment plans.

[7]*See* note 4 *supra*. In addition to the problem of the independent state ground for the *Serrano* decision, it is clear that the Supreme Court cannot review it at this time because it is not a final judgment. *See* 28 U.S.C. §1257 (1970).

inequality cases in the process of litigation,[8] at least one of which will soon present the United States Supreme Court with the *Serrano* problem.[9]

The primary reason for the favorable reception of *Serrano* is probably the growing public eagerness for its result. Unlike many other societal problems in education and other areas, the concept of fiscal equality in education is perceived as unambiguously good. It does not appear to involve the competing views of equality prevalent in desegregation and community control issues. Nor does it represent the significant clash between the values of equality and liberty that the desegregation and community control issues may present. The only visible liberty being curtailed is local economic self-determination, a value currently of low priority in our society when balanced against the promise of improving education for the poor and racial minorities. Fiscal equality also holds out the promise of improving education for the poor and racial minorities, without raising the fears of personal adverse effects on the white middle-class family aroused by other proposed policies, such as desegregation. Fiscal equali-

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[8]Also pending before a 3-judge court is the constitutionality of the Florida school financing system. *See* Askew v. Hargrave, 401 U.S. 476 (1971), *vacating per curiam* Hargrave v. Kirk, 313 F. Supp. 944 (M.D. Fla. 1970). Recent state court decisions that followed *Serrano* are: Hollins v. Shofstall, No. C-253652 (Super. Ct. Maricopa County, Ariz. Jan. 13, 1972); Robinson v. Cahill, 118 N.J. Super. 223, 287 A.2d 187 (1972); Sweetwater County Planning Comm. for the Organization of School Dists. v. Hinkle, 491 P.2d 1234 (Wyo. 1971). In disagreement with *Serrano* is Spano v. Board of Educ., 328 N.Y. S.2d 229 (Sup. Ct. 1972). The issue is now before the court in more than half the states. *See* Wall St. J., Mar. 2, 1972, at 1, col. 6.

[9]It appears that the decision in *Rodriguez* is immediately appealable to the United States Supreme Court. *See* 28 U.S.C. §1253 (1970). If appealed, it would presumably be heard in the October term, 1972.

ty involves the movement of inanimate dollars, not live children.[10]

Finally, fiscal equality corresponds to a basic American belief that more money, or money distributed more wisely, can solve major societal problems such as the current state of public education, and that all society need do is to have the will to so spend or distribute it. In Daniel P. Moynihan's terms, *Serrano* leads one to hope that what may have been considered a "knowledge problem" is indeed a "political" one, or better yet, a judicial one.[11]

Serrano is unquestionably sound as a matter of abstract egalitarian philosophy. Nevertheless, there are many difficulties presented by its legal analysis. Moreover, it is not at all clear that the practical effect of the decision will be to improve the quality of public education generally, or the quality of urban public education in particular.

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[10]The *Serrano* result and metropolitan desegregation, *e.g.*, Bradley v. School Bd., 40 U.S.L.W. 2446 (E.D. Va. Jan. 5, 1972), can be viewed as alternative methods of improving the educational quality of urban minority groups, to the extent that the argument for metropolitan desegregation rests on a desire to give the black urban poor access to the tax base of their more affluent white suburban neighbors. *Compare* Hobson v. Hansen, 327 F. Supp. 844 (D.D.C. 1971), *with* Johnson v. San Francisco Unified School Dist., No. C-70 1331 SAW (N.D. Cal. June 2, 1971). *See also* Spencer v. Kugler, 40 U.S.L.W. 3333 (U.S. Jan. 17, 1972); United States v. Board of School Comm'rs. 332 F. Supp. 655 (S.D. Ind. 1971).

[11]Moynihan, *Can Courts and Money Do It?*, N.Y. Times, Jan. 10, 1972, §E (Annual Education Review), at 1, col. 3; *id.* at 24, col. 1.

I. School District Inequality and the *Serrano* Response

A. *The Court's Response to Interdistrict Financing Differentials*

As is true with every state except Hawaii, over 90% of California's public school funds derive from a combination of school district real property taxes and state aid based largely on sales or income taxation. Historically the state aid, or "subvention," has been superimposed on the basic system of locally raised revenue. Although the state aid component of educational expenditures has been generally increasing as a percentage of the total expenditures, the local component has remained dominant. California is typical in having total educational expenditures consist of 55.7 percent local property taxes and 35.5 percent state aid.[12]

The local component is a product of a locality's tax base (primarily the assessed valuation of real property within its borders) and its tax rate. Tax bases in California, as elsewhere, vary widely throughout the state. Tax rates also vary from district to district.

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[12]In addition, federal funds account for 6.1% and other sources for 2.7%. These figures and others given for California in this Article are taken from the court's opinion in *Serrano*. 5 Cal. 3d at 591 n.2, 487 P.2d at 1246 n.2, 96 Cal. Rptr. at 606 n.2.

In discussig expenditure differentials, the *Serrano* court did not indicate whether or not its figures included federal revenues. Other authorities have excluded federal revenues from these calculations. This author has elsewhere questioned the validity of this exclusion. *See* Goldstein, Book Review, 59 Calif. L. Rev. 302, 303-04 (1971). Nationwide, approximately 52% of all school revenue is collected locally, and from 97-98% of local tax revenue is derived from property taxes. Briley, *Variation between School District Revenue and Financial Ability. in* Status and Impact of Educational Finance Programs 49-50 (R. Johns, K. Alexander & D. Stollar eds. 1971) (National Educational Finance Project vol. 4). In California, all local school revenues are raised by property taxation. *See* Cal. Educ. Code §§20701-06 (1969).

The state component of school expenditures is generally distributed through a flat grant system, a foundation system, or a combination of the two. The flat grant is the earliest and simplest form of subvention, consisting of an absolute number of dollars distributed to each school district on a per-pupil or other-unit standard. Foundation plans are more complicated and have a number of variants. In its simplest form, a foundation plan consists of a state guarantee to a district of a minimum level of available dollars per student, if the district taxes itself at a specified minimum rate. The state aid makes up the difference between local collections at the specified rate and this guaranteed amount. If the actual tax rate is greater than the specified rate, the funds raised by the additional taxes are retained by the locality but do not affect the amount of state aid.

Finally, there are combinations of flat grants and foundation plans. Under one form of combination plan the flat grant is added to whatever foundation aid is due to the district:

> State Aid = [guaranteed amount — local collection at specified rate] + flat grant.

Under the other combination system, the flat grant is added to the local collection in initially calculating the foundation grant:

> State Aid = [guaranteed amount — (local collection at specified rate + flat grant)] + flat grant.

Under this approach, a district that would qualify for a state foundation grant equal to, or in excess of, the flat grant does not in effect receive the flat grant. That grant is superfluous when it serves only to bring a district up to the foundation level, because a district is always guaranteed the foundation level in any case. The full benefit of the flat grant goes only to those districts where the local collection at the specified rate equals or exceeds the foundation guarantee.

The latter combination plan is the system employed in California.[13] The flat grant is $125 per pupil. The foundation minimum, based on a tax rate of 1.0 percent for elementary school districts and 0.8 percent for high school districts,[14] is $355 for each elementary school pupil and $488 for each high school student, subject to specified minor exceptions. An additional state program of "supplemental aid" subsidizes particularly poor school districts that are willing to set local tax rates above a certain statutory level. An elementary school district with an assessed valuation of $12,500 or less per pupil may obtain up to $125 more for each child under this plan. A high school district whose assessed valuation does not exceed $24,500 per pupil can

[13]As noted, this results in the quirk that the full effects of the flat grant are available only to those districts whose revenue at the prescribed rate exceeds the foundation guarantee. There would seem to be no rational basis for this result. The *Serrano* court, however, did no more than mention this fact and there is no indication that the opinion rested on it.

[14]This is simply a computational tax rate used to measure the relative tax bases of the different districts. It does not necessarily relate to the actual rates levied.

receive a supplement of up to $72 per pupil if it taxes at a sufficiently high rate.[15]

Although the foundation plan does help to equalize available educational funds throughout the state, the relatively low foundation guarantee nevertheless allows significant disparities among school districts. The *Serrano* court cited the following statistics for the 1969-1970 school year for district per-pupil educational expenditures:

	Elementary	*High School*	*Unified*[16]
Low	$ 407	$ 722	$ 612
Median	672	898	766
High	2586	1767	2414

Statistics cited by the court for assessed valuations per pupil also reflected the disparities:

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[15]There are other minor provisions in the state subvention system. Districts that maintain "unnecessary small schools" receive $10 per pupil in their foundation guarantee, a sum intended to reduce class sizes in elementary schools. Unified districts (those which contain both elementary and secondary schools) receive $20 more per pupil in foundation grants. In addition, a special program attempts to provide equalization in districts included in reorganization plans that were rejected by the voters. It gives the poorer districts in the reorganization the effect of the reorganization to the limited extent of levying a tax areawide, of 1.0% in elementary districts and 0.8% in high school districts. The resulting revenue is then distributed among the individual districts according to the ratio of each district's foundation level to the areawide total revenue. Thus, in these rare circumstances of voter-rejected reorganization plans, poorer districts share in the higher tax bases of wealthier districts in their area. The districts are, of course, free to tax themselves above the 1.0% or 0.8% level and retain all additional revenue. 5 Cal. 3d at 593 n.8, 487 P.2d at 1247 n.8, 96 Cal. Rptr. at 607 n.8.

[16]*Id.* at 593 n.9, 487 P.2d at 1247 n.9, 96 Cal. Rptr. at 607 n.9.

	Elementary	*High School*[17]
Low	$ 103	$ 11,959
Median	19,600	41,300
High	952,156	349,093

The complaint in *Serrano* set forth two main causes of action. The first was that of plaintiff school children residing in all school districts except the one that "affords the greatest educational opportunity," who alleged that:

> As a direct result of the financing scheme . . . substantial disparities in the quality and extent of availability of educational opportunities exist and are perpetuated among the several school districts of the State . . . . The educational opportunities made available to children attending public schools in the Districts, including plaintiff children, are substantially inferior to the educational opportunities made available to children attending public schools in many other districts in the State . . . .[18]

The financing scheme was alleged, therefore, to violate the equal protection clause of the fourteenth amendment and various clauses of the California Constitution.

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[17] *Id.* Note that these figures and those in the text accompanying note 16 *supra*, represent the extremes and thus may be skewed, as extremes often are. In this case a major skewing mechanism may be an abnormally low number of public school students in a given district. Even outside the extremes, however, the discrepancies in California are substantial. These assessed valuation per pupil figures also assume uniform assessment practices. This assumption was not discussed by the court. The discrepancies were much less substantial in Texas but the system was invalidated nonetheless. *See* Rodriguez v. San Antonio Ind. School Dist., 337 F. Supp. 280 (W.D. Tex. 1971).

[18] 5 Cal. 3d at 590. 487 P.2d at 1244, 96 Cal. Rptr. at 604.

The second cause of action, brought by the parents of the school children, as taxpayers, incorporated all the allegations of the first claim. It went on to allege that as a direct result of the financing scheme, plaintiffs were required to pay a higher tax rate than taxpayers in many other school districts to obtain for their children the same or lesser educational opportunities.

The complaint sought: (1) a declaration that the system as it existed was unconstitutional; (2) an order directing state administrative officials to reallocate school funds to remedy the system's constitutional infirmities; and (3) retention of jurisdiction by the trial court so that it could restructure the system if the legislature failed to do so within a reasonable time[19] The trial court sustained a general demurrer to the complaint and the action was dismissed. The dismissal of the complaint for failing to set forth a cause of action was appealed to the California Supreme Court.

The California Supreme Court stated the issue in the first line of its opinion:

> We are called upon to determine whether the California public school financing system, with its substantial dependence on local property taxes and resultant wide disparities in school revenue, violates the equal protection clause of the Fourteenth Amendment.[20]

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[19] *Id.* at 591, 487 P.2d at 1245, 96 Cal. Rptr. at 605.

[20] *Id.* at 589, 487 P.2d at 1244, 96 Cal. Rptr. at 604.

The court immediately went on to hold:

> We have determined that this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors. Recognizing as we must that the right to an education in our public schools is a fundamental interest which cannot be conditioned on wealth, we can discern no compelling state purpose necessitating the present method of financing. We have concluded, therefore, that such a system cannot withstand constitutional challenge and must fall before the equal protection clause.[21]

In so holding, the California court employed the "new equal protection" analysis. Under this doctrine, certain types of legislative classification require a higher level of state justification to pass judicial scrutiny than is required under the traditional "rational basis" equal protection test. This doctrine holds that if a suspect classification is employed, and the classification pertains to a fundamental interest,[22] then the

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[21] *Id.*

[22] It is unclear whether the court regarded the fundamental interest and suspect classification tests as operating in conjunction with each other as stated in the text or as operating independently. *Compare id.* at 612, 487 P.2d at 1261, 96 Cal. Rptr. at 621, *with* 5 Cal. 3d at 604, 487 P.2d at 1257, 96 Cal. Rptr. at 615. To the extent the court suggested that either test, operating independently, would trigger the "special scrutiny" review of state action, it appears to be an inaccurate view of the present state of the law as applied to state actions other than racial classifications.

The invariable formulation of the doctrine as applied to wealth classifications requires both wealth classification and impairment of a fundamental interest in some varying combination. *See* Bullock v. Carter, 40 U.S.L.W. 4211, 4214 (U.S. Feb. 24, 1972); Dandridge v. Williams, 397 U.S. 471, 519-30 (1970) (Marshall, J., dissenting). But *see* Shapiro v. Thompson, 394 U.S. 618, 658 (Harlan, J., dissenting.) *See* generally J. Coons, W. Clune & S. Sugarman, Private Wealth and Public Education 339-446 (1970) [hereinafter cited as Private Wealth and Public Education].

classification violates the equal protection clause unless it is necessitated by a compelling state purpose. A fuller discussion of the *Serrano* court's use of this doctrine follows.

B. *The Choice of a Standard of Equality: Response to Activist Legal Scholarship*

The most striking element in the California Supreme Court's holding was its reliance on the relationship between the *wealth* of a school district and its educational expenditures. By "wealth" the court meant taxable wealth (property tax basis[23]) per pupil or other unit. Yet, as stated above, the local component of school financing is a product of taxable wealth and tax rate. A district's expenditures may be low because it is low in taxable wealth or because it chooses to tax itself at a low rate, or both. Why, then, did the court focus on wealth differences as the constitutional vice, rather than on disparities in expenditures, regardless of cause?

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[23] *Serrano* and its progeny have been predicated on the assumption of the exclusive use of the real estate property tax for local education financing. As stated in note 12 *supra*, however, nationwide property taxes constitute 97-98% of local taxes for education and thus are *almost* the exclusive but are not the exclusive means of local financing. Indeed, by 1968-1969, 22 states and the District of Columbia authorized the use of local nonproperty taxes by local school districts. ALTERNATIVE PROGRAMS FOR FINANCING EDUCATION 186 (1971) (National Educational Finance Project vol. 5). While this still amounted to less than 3% of local education taxes nationwide, in a given state the amount could be sufficiently significant that the *Serrano* analysis premised on exclusive real estate taxation would be inapplicable. For example, in Pennsylvania local nonproperty taxes in 1968-1969 produced a mean revenue per pupil of $101.30 in central city districts. *Id.* 187.

Local nonproperty taxes include occupational, utility, and other excise taxes, as well as local sales and income taxes. Tax bases for such taxes would be much more difficult to calculate than is a given locality's real property tax base.

To understand this, one must know something about the legal literature that predated *Serrano*. The literature in this field, particularly the book *Private Wealth and Public Education*,[24] exemplifies a current wave of consciously activist scholarship, written with an avowed bias, and aimed at producing specific legal results. This new breed of writers, not content with pure scholarship, actively engages in the litigation process to accomplish their aims.[25] This activist legal scholarship—of a very high caliber—produced the legal formulations manifested in *Serrano*.[26]

Serrano apparently adopted as the constitutional rule what was denominated as Proposition 1 in *Private Wealth and Public Education*:[27] "The quality of public education may not be a function of wealth other than the wealth of the state as a whole."[28] Proposition 1

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[24]*Supra* note 22.

[25]Coons and Sugarman, for example, filed amicus briefs in *Serrano* and *Rodriguez*.

[26]Although the court acknowledged its reliance on Coons, Clune & Sugarman by citations throughout the opinion, it cited a law review article, Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 CALIF. L. REV. 305 (1969), rather than the more comprehensive analysis in PRIVATE WEALTH AND PUBLIC EDUCATION, *supra* note 22. The reason for this is not clear. This may reflect only the opinion writer's relative access to the two works. It may also reflect the court's sensitivity to the reader's relative access to the two works. Finally, it might be suggested that it represents a possible reflection of the difference in esteem, in California, between the California Law Review and the Harvard University Press.

[27]The following discussion of Proposition 1 and district power equalizing is based upon, and some parts are taken entirely from, an earlier analysis of *Private Wealth and Public Education* by this author. Goldstein, Book Review, 59 CALIF. L. REV. 302, 304-10 (1971).

[28]PRIVATE WEALTH AND PUBLIC EDUCATION, *supra* note 22, at 2 (emphasis omitted). Proposition 1 is, however, never directly quoted by the *Serrano* Court. The federal court in Van Dusartz, 334 F. Supp. 870 (D. Minn. 1971), which expressly relied on *Serrano*, did quote Proposition 1 and explicitly accepted it as the constitutional standard. *Id.* at 872 & n.1. Somewhat less

itself was a response to prior debate about interdistrict disparities in educational offerings. Recently there has been increased concern with inequalities in government services, especially as they affect the poor. In particular, society has become increasingly concerned with the deplorable condition of urban public education. It has been argued that a major cause of this condition is the relative lack of resources available to urban school districts as compared to their more affluent suburban neighbors. Moreover, there has been increased recognition that plans for improving urban education through such alternatives as integration, decentralization and community control, or compensatory education are, in the final result, highly dependent on the availability of greater resources for urban school districts.

Although the exact relationship between financially poor school districts and poor people, particularly the urban poor, is unclear,[29] the existence of large wealth discrepancies among school districts is undeniable. The disparity in the quality of education, as conventionally measured, between urban and suburban school districts

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clearly the 3-judge court in *Rodriguez* seemed to adopt Proposition 1 as the constitutional rule.

One caveat must be stated regarding the *Serrano* court's acceptance of Proposition 1 as the constitutional test. As will be discussed at length, text accompanying notes 30-44 *infra*, Proposition 1 and *Serrano* do not require equality of expenditures. Neither, however, is Proposition 1 satisfied by equality of expenditures. If equal expenditures were achieved by differential rates applied to differential tax bases, that is, lower tax base districts achieving the same revenue level by employing higher rates, Proposition 1 would not be satisfied. At this point Proposition 1 leaves education as its concern and becomes completely taxpayer oriented. Despite the taxpayer orientation in *Serrano*, *see* text accompanying notes 86-91 *infra*, it is unlikely that the *Serrano* court would go this far. Throughout the opinion, the court emphasized differential educational expenditures.

[29] *See* notes 65-75 *infra* & accompanying text.

is also apparent. Thus the existing system of educational financing has been increasingly condemned as intolerable. However, there has existed substantial disagreement on methods of relief. Opponents of judicial intervention have argued against court action to invalidate the current system: first, for lack of a workable judicial standard; secondly, because an equality concept might result in a downward leveling of expenditures when the real need is to improve low quality; thirdly, because judicial relief would result in centralization of educational financing; and fourthly, because an equality requirement that prevented local school expenditures above the state norm would be either unworkable or would result in substantial middle class exodus from the public schools.[30]

Proposition 1 was an avowed attempt to respond to these criticisms. By adopting it, the California Supreme Court has apparently limited its decision to wealth-derived educational differentials and has not required equal expenditures statewide. On this basis of decision, there are a number of alternative school financing systems that would meet the court's constitutional standard. Among these is abolition of local school districts and their replacement with a completely statewide system. Short of that, centralized state financing

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[30] *See* Kurland, *Equal Educational Opportunity: The Limits of Constitutional Jurisprudence Undefined*, 35 U.CHI. L. REV. 583 (1968). For the views of the proponents of judicial intervention, see A. WISE, RICH SCHOOLS, POOR SCHOOLS: THE PROMISE OF EQUAL EDUCATIONAL OPPORTUNITY 145-59 (1968); Horowitz & Neitring, *Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs From Place to Place Within a State*, 15 U.C.L.A. REV. 787 (1968); Kirp, *The Poor, the Schools, and Equal Protection*, 38 HARV. EDUC. REV. 635 (1968).

that raises and distributes all funds could be coupled with local district administration of the schools. Centralized financing, however, is not required under the *Serrano* rule invalidating only wealth-derived differentials. A general school redistricting that equalized wealth among school districts would satisfy the decision and at the same time allow the present system of financing and administration to continue. Finally, there is the innovative suggestion proposed in *Private Wealth and Public Education*—district power equalizing—a system that allows differential expenditures among school districts, while removing the effect of differential tax bases on these expenditures.

Under district power equalizing, existing school districts would have funds available for education based on their tax rate regardless of their tax base. A school district would be free to choose any tax rate it desired and its available funds—defined as "x dollars per educational unit"—would be established by the state for any given tax rate. In a simplified model, a district power equalizing scheme might appear as follows:

Tax Rate	*Available Funds*
1 %	$ 400 per educational task unit
1½	600
2	800
2½	1000
3	1200

A district with a low tax base whose chosen tax rate produced less revenue than the state prescribed amount

would receive state funds to make up the difference. A district that produced more revenue than the state prescribed amount at its chosen rate would be required to pay the excess to the state.

The scheme of power equalizing as a means to satisfy the requirements of Proposition 1 has been attacked on equalitarian grounds. It requires merely that district wealth disparities be eliminated as a factor in financing education, thus still permitting districts to spend more by taxing more. What is in fact required, it is argued, is statewide equality of learning opportunity to the extent achievable by statewide financing.[31] The *Serrano* decision is subject to the same attack insofar as the court adopts an equal wealth formula, rather than an equal expenditure formula.

It is not indisputably clear, however, that the court has rejected the equalization of expenditures formula. Although the language quoted above, and other statements in the opinion seem to accept the equal wealth standard, it might well be argued that the court decided only the facts before it—that the existing financing scheme was unconstitutional—and did not go so far as to endorse an equal wealth standard or reject the argument that an equalization of expenditures standard is constitutionally required. Indeed, in response to an argument that autonomous local decisionmaking was so important a value that it

[31] *See, e.g.*, Silard & White, *Intrastate Inequalities in Public Education: The Case for Judicial Relief Under the Equal Protection Clause*, 1970 Wis. L. Rev. 7, 26-28, 30.

justified the existing system, the court stated: "We need not decide whether such decentralized financial decision-making is a compelling state interest, since under the present financing system, such fiscal free will is a cruel illusion for the poor school districts."[82] Other evidence of the court's possible acceptance of the equal expenditure formula as being constitutionally required is its specific recognition that many of the values of local choice could still be preserved under a spending equalization formula that centralized financing but localized administration of schools.

The court's possible failure to rule out a constitutional command of expenditure equalization may also be explained by the fact that tax base, not tax rate, is the main determinant of local educational expenditures. Available statistics, in California and elsewhere, indicate that districts with smaller tax bases, such as Baldwin Park, tax themselves at higher rates than do richer districts, such as Beverly Hills, even though their total yield is not as great.[83] Therefore, the *Serrano* court may have assumed that Proposition 1, which removes the wealth factor, would produce generally equal offerings among school districts, and thus left until another day the issue of what happens if it does not.

These reasons, however, are not sufficient to explain the very strong equal wealth emphasis in the

[82] 5 Cal. 3d at 611, 487 P.2d at 1260, 96 Cal. Rptr. at 620.
[83] *Id.*; PRIVATE WEALTH AND PUBLIC EDUCATION, *supra* note 22, at 127-50. *See also* ALTERNATIVE PROGRAMS FOR FINANCING EDUCATION 81-101 (1971) (National Educational Finance Project vol. 5).

Serrano opinion. The most logical reading of the decision is that the court did adopt the formula of equal wealth rather than the equal expenditures formula as its constitutional command. The probable explanation for this is twofold. First, an expenditure equalization standard would cause problems with compensatory education and other programs that would devote extra funds for the education of disadvantaged students. The propopents of equal expenditures are also in favor of this degree of inequality and struggle valiantly to make these concepts consistent. Perhaps their struggles are successful. It is much easier, however, to avoid the inconsistency by not adopting an equal expenditure test in the first place.

The second basic argument in favor of an equal wealth standard is that it permits a local school district to choose how much it wishes to spend on the education of its children. The desirability of retaining this local choice responds to basic federalist, pluralist values of diversity and local decisionmaking—a concept termed "subsidiarity" in *Private Wealth and Public Education.*[34] In *Serrano* the state argued that the existing school financing system was constitutionally valid because it incorporated just these values.[35]

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[34]PRIVATE WEALTH AND PUBLIC EDUCATION, *supra* note 22, at 14-15. Subsidiarity is "the principle that government should ordinarily leave decisionmaking and administration to the smallest unit of society competent to handle them." *Id.* 14. *See also* Goldstein, Book Review, 59 CALIF. L. REV. 302, 306 (1971).

[35]The court quoted the state's argument that:

"[I]f one district raises a lesser amount per pupil than another district, this is a matter of choice and preference of the individual district and reflects the individual desire for lower taxes rather than an expanded educational program, or may reflect a greater interest within

The court's response, while rejecting the state's argument, shows sensitivity to the idea of local choice:

> [S]o long as the assessed valuation within a district's boundaries is a major determinant of how much it can spend for its schools, only a district with a large tax base will be truly able to decide how much it really cares about education. The poor district cannot freely choose to tax itself into an excellence which its tax rolls cannot provide. Far from being necessary to promote local fiscal choice, the present financing system actually deprives the less wealthy districts of that option.[36]

The *Serrano* court did recognize that local choice in nonfiscal educational matters might still be retained under centralized financing; yet this limited degree of choice is not sufficient. As a purely theoretical issue it is difficult to determine the value of retaining local control over educational spending, particularly when weighed against the possibility of continuing expenditure inequalities, which the retention of local choice produces. But this issue is not merely a matter of political theory. Rather, adoption of the equal wealth standard in *Serrano* is an implicit recognition of the fact that, in light of our history and traditions, judicial or legislative decrees cannot be used to prevent localilies from trying to get better education for their children by raising more funds locally.

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that district in such other services that are supported by local property taxes as, for example, police and fire protection or hospital services."
5 Cal. 3d at 611, 487 P.2d at 1260, 96 Cal. Rptr. at 620.

[36] *Id.*

A pre-*Serrano* law review article[37] by Silard and White, which dismissed district power equalizing in one paragraph as not producing equality of educational offerings, ended discussion of its equalization solution, centralized financing, by adding: "The [centralized financing] mechanism might also be formulated in such a way as to *retain a local option to surtax for additional education.*"[38] This "local option" is obviously a device to allow localities to spend more on education than the centrally determined norm, and thus produce inequalities in offering. Despite their very strong commitment to egalitarian principles, proponents of judicial action in this field obviously cannot resist the notion that local districts should retain the option to spend more on education. It is this fact, deeply embedded in our public consciousness, that primarily explains why the *Serrano* court did not and would not require spending equality.[39]

The existence of this public sense raises a further question about the limits of *Serrano*. Is the Silard and White system—centralized financing with a local option surtax—consistent with the California court's constitutional standard? While the spending equalization standard is not required under *Serrano*, it remains to be seen what minimal remedies are consistent with the

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[37]Silard & White, *supra* note 31.

[38]*Id.* 29 (emphasis added).

[39]This public feeling was clearly expressed in the response to the *Serrano* decision in a New York Times editorial. After hailing the case on egalitarian grounds, the editorial abruptly concluded with the assertion that the ideal solution for school financing lies in centralized state financing "without discouraging additional investments by education minded communities in the betterment of their schools." N.Y. Times, Sept. 2, 1971, at 32, col. 1.

standard actually adopted by the court, and thereby determine the limits of its holding. Any appearance of consistency between *Serrano* and the surtax proposal is nothing more than a semantic illusion, unless the surtax were based on power equalization or another scheme that removed differential tax bases as an element in a district's ability to surtax itself. Otherwise the surtax has the same constitutional defect as that condemned in *Serrano* because the quality of a child's education remains dependent on the district's wealth. In fact, the surtax system is the present system in California—it is the foundation plan. The justifications for the surtax are the reasons given above for preferring district power equalizing over expenditure equalization—subsidiarity and the deeply embedded feeling that one cannot preclude a locality from taxing itself more heavily, if it so chooses, to get better education for its children. But, if one accepts the *Serrano* equal protection reasoning, these concepts and this felt need are only sufficient to justify the surtax if the surtax is necessitated by a compelling state purpose. It is not clear that these factors even provide a sufficiently compelling purpose to justify district power equalizing. Even if they do, however, they would not justify a non-power equalized surtax. Such a surtax is not necessary, because its objective of allowing local choice can be achieved by power equalizing. Thus, because it has the *Serrano*-determined constitutional vice of differential expenditures related to differential tax bases that power equalizing does not have, it must be invalid under *Serrano*.

The proposal of a centralized financing system with a local surtax option also suggests that the evils of school finance might be remedied merely by increasing the minimum spent per child. Following this line, a system that increased the California foundation plan, say from $500 to $1000, might be said to accomplish the goal of providing to each student, regardless of the district in which he resides, an adequate level of educational expenditure. Such a constitutional standard would be based not on equal protection but on a constitutional right to an affirmative minimum provision of services similar to that suggested by Professor Frank Michelman and discussed later in a footnote to this Article.[40] One of the most fundamental objections to this concept of minimum provision of services is the inability of courts to determine at what point the minimum of a given service has been reached. In the hypothetical above, $1000 was used, but why should the minimum not be $1200? Indeed, why is the current minimum of approximately $500 unacceptable? Apparently the California legislature believed it to be sufficient.

One might simply argue that a minimum of $500 is unreasonable, a determination that a court could make without having to determine exactly what the minimum should be. Such an approach, however, ignores the need for judicial standards as illustrated by recent Supreme Court history. As happened in reapportionment be-

[40] *See* note 84 *infra*; Michelman, *Forward: On Protecting the Poor Through the Fourteenth Amendment, The Supreme Court, 1968 Term*, 83 HARV. L. REV. 7 (1969).

tween the *Baker v. Carr*[41] "rationality" test and the *Reynolds v. Sims*[42] "one man-one vote" test, once a court defines a principle it is difficult to stop short of setting a minimum standard.[43]

Lastly, one may argue that, under a system with a sufficiently large state minimum, the surtax is merely a minor deviation that will be permitted under *Serrano* in the same manner that the United States Supreme Court has allowed a degree of deviation from mathematical precision under its one man-one vote rule. The two situations are not comparable, however. The surtax, unlike the unavoidable, inconsequential deviations of voting district mathematics, is a policy decision to allow some school districts to make their schools unequal to schools in other districts. The more apt reapportionment analogy is deviation for policy preferences, such as protecting rural areas. Such policy preferences have been rejected by the Supreme Court in the reapportionment cases.[44] Of course, in school financial equalization there will be deviations from

[41]369 U.S. 186 (1962).

[42]377 U.S. 533 (1964).

[43]Professor Michelman recognized this when he hypothesized the application of his minimum protection theory to education. After suggesting that each child was constitutionally entitled to a minimum provision of education, he concluded that minimum provision would mean equalization. He based this conclusion on the fact that education is valued because of its relevance to competitive activities; thus the minimum required for *A* must be determined in relation to what his competitor, or future competitor, *B*, is receiving. While there is merit in this position, Professor Michelman overstates it when he thereby equates the minimum with no substantial inequality. The fact that he does so, however, is indicative of the standardless nature of the minimum provision theory. Professor Michelman thus is driven to equalization in order to provide a standard. Michelman, *supra* note 40, at 47-59.

[44]*See* Reynolds v. Sims, 377 U.S. 533, 562-68 (1964). *But see* Abate v. Mundt, 403 U.S. 182 (1971).

mathematical certainties as a result of such things as differential labor costs and economies of scale. Such deviations occur because of a practical inability to achieve perfect equality. The surtax is not such a deviation. It represents a conscious decision to create inequality.

II. District Wealth Discrimination: A Suspect Classification?

While the California Supreme Court's reliance on an equal wealth formula thereby precludes resort to remedies such as the surtax system, and limits the holding so that it does not require expenditure equalization, the court's adoption of equal wealth has significance beyond its force as a limitation. Wealth discrimination was, in fact, the affirmative basis used to invalidate an almost universal school financing system. The *Serrano* court cited "wealth discrimination" as one of the "suspect classifications" that, in conjunction with a fundamental interest, triggered the "new equal protection."[45]

The *Serrano* court held that "this funding scheme invidiously discriminates against the poor because it makes the quality of a child's education a function of the wealth of his parents and neighbors,"[46] that is, the wealth of his school district. The factual data relied on by the court in reaching this result, however, consisted of disparities in tax bases and school expendi-

[45] 5 Cal. 3d at 597, 487 P.2d at 1250, 96 Cal. Rptr. at 610.
[46] *Id.* at 590, 487 P.2d at 1244, 96 Cal. Rptr. at 604.

tures among school districts. Therefore, two basic questions must be answered before this holding is related to the data:

1. What is the relationship between school expenditures and the "quality" of a child's education?

2. What is the relationship between poor districts —districts with low taxable wealth—and poor people?

A. *The Relationship of Expenditures to Educational Quality*

The problem of relating levels of educational expenditures to quality of education is a persistent and annoying one. For one thing, there is no consensus on what the desired educational outputs are, or how educational quality should be measured. Secondly, there is very little empirical data to support a finding of an affirmative relationship between expenditure levels and measurable educational outputs.

The Coleman Report,[47] the leading study attempting to correlate selected educational outputs with various inputs, founds little relationship between expenditure levels and the educational outputs it measured, when other variables were held constant.[48] While the Coleman Report's methodology has been attacked persuasively,[49] affirmative data that dispute its conclusion

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[47] Office of Education, U.S. Dep't of Health, Education & Welfare, Equality of Educational Opportunity (1966).

[48] *See id.* 20-21, 312-16.

[49] *See* Bowles & Levin, *The Determinants of Scholastic Achievement—An Appraisal of Some Recent Evidence*, 3 J. Human Resources 3 (1968).

remain minimal.[50] The Coleman Report and other studies are concerned with spending differentials only within the relatively narrow range of current school expenditures. The lack of correlation between expenditure levels and educational outputs in this range does not preclude the possibility of some absolute minimum of expenditures being necessary to achieve measurable educational outputs. Further, this absence of correlation between expenditures and outputs is more understandable when it is recognized that approximately two-thirds of a typical school district's revenues are spent for teacher salaries.[51] Differences in teacher salaries are often a function not of teaching quality, but of such indirectly related factors as longevity and educational degrees. Differences in salary scales among districts may be the result of such factors as differential general wage scales and the bargaining power of teacher unions. The *Serrano* court discussed the problem of relating expenditures to quality in a footnote and admitted that "there is considerable controversy among educators over the relative impact of educa-

[50]Some support for a correlation between expenditure level and quality of education is found in J. GUTHRIE, G. KLEINDORFER, H. LEVIN & R. STOUT, SCHOOLS AND INEQUALITY (1971). This support, however, is hardly sufficient to support a judicial finding of correlation. Moreover, a recently published reexamination of the Coleman data by a score of eminent social scientists in a faculty seminar at Harvard University has confirmed the findings of the original report, while avoiding some of the original report's methodological problems. Indeed, this reexamination indicates that the influence of school expenditures on student achievement is even weaker than was indicated by the original Coleman Report. *See* Mosteller & Moynihan, *A. Pathbreaking Report*, in ON EQUALITY OF EDUCATIONAL OPPORTUNITY 36-45 (F. Mosteller & D. Moynihan eds. 1972); Jencks, *The Coleman Report and the Conventional Wisdom*, in *id.* 69-115; Smith, Equality of Educational Opportunity: *The Basic Findings Reconsidered*, in *id.* 230-42.

[51]Schoettle, *The Equal Protection Clause in Public Education*, 71 COLUM. L. REV. 1355, 1359 (1971).

tional spending and environmental influences on school achievement . . . ."[52]

The court avoided the problem in two ways. One was to cite other cases that have rejected the argument that there is no proof that different levels of expenditure affect the quality of education.[53] Except for the latest decision in *Hobson v. Hansen*,[54] discussed below, these cases have not given a rationale for this rejection.

Secondly, the court relied on the procedural posture of the case. Since the complaint was dismissed on demurrer, the court countered the defendant's contention that different levels of educational expenditures do not affect the quality of education with the statement that "plaintiffs' complaint specifically alleges the contrary, and for purposes of testing the sufficiency of a complaint against a general demurrer, we must take its allegations to be true."[55] It is not clear that this approach was consistent with the court's earlier statement that the California procedure is to "treat the

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[52]5 Cal. 3d at 601 n. 16, 487 P. 2nd at 1253 n. 16, 96 Cal. Rptr. at 613 n. 16.

[53]*Id.* The court cited McInnis v. Shapiro, 293 F. Supp. 327 (N.D. Ill. 1968), *aff'd mem. sub nom.* McInnis v. Ogilvie, 394 U.S. 322 (1969), in which a 3-judge federal court stated, without a supporting citation, in the course of rejecting a constitutional attack on interdistrict differentials in school financing, "[p]resumably, students receiving a $1000 education are better educated that [*sic*] those acquiring a $600 schooling." 293 F. Supp. at 331.

In another case cited in *Serrano*, Hargrave v. Kirk, 313 F. Supp. 944 (M.D. Fla. 1970), *vacated on other grounds per curiam sub nom.* Askew v. Hargrave, 401 U.S. 476 (1971), the district court stated: "[I]t may be that in the abstract 'the difference in dollars available does not necessarily produce a difference in the quality of education.' But this abstract statement must give way to proof to the contrary in this case." 313 F. Supp. at 947. No proof on this issue, however, was ever stated by the court in *Hargrave* and the opinion goes on not to discuss this, but to discuss the inability of school districts to raise school revenues under the Florida system.

[54]327 F. Supp. 844 (D.D.C. 1971).

[55]5 Cal. 3d at 601 n. 16, 487 P. 2d at 1253 n. 16, 96 Cal. Rptr. at 613

demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.'"[56] The court did not explain why, for example, the possibility of a causal relationship between expenditures and educational quality would not be considered a contention of fact. More significantly, the reliance on this procedural posture, if this is what the court did, means that the issue still remains open for proof—proof that does not appear to be available.

The authors of *Private Wealth and Public Education,* in enunciating the equal wealth standard, try to finesse the problem by stating the issue as equality of resources available to the student rather than as equality of educational offerings. What is available, they then contend, are the goods and services purchased by school districts, and there is no reason to assume that the money spent for these goods and services is not the appropriate measure of their value.[57]

The problems may also be avoided in terms of burden of proof. When *A* shows that the state is spending more money on *B* than on him, the state must respond by demonstrating either that this fact is irrelevant because *A* is not really receiving less than *B,* or that even if *A* is receiving less, the differential is still constitutionally permissible. Available data are insufficient to support a state's assertion that expenditures are irrelevant to educational equality and thus the issue shifts to

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[56] *Id.* at 591, 487 P.2d at 1245, 96 Cal. Rptr. at 605.

[57] PRIVATE WEALTH AND PUBLIC EDUCATION, *supra* note 22, at 25-27.

a determination of the constitutionality of differential treatment. This burden of proof approach to the issue was apparently the one taken by Judge Wright in the latest decision of *Hobson v. Hansen*,[58] although there were also elements of estoppel involved in the *Hobson* court's reliance on the school administration's own assertions of a correlation beteen educational resources and quality of education.[59]

While the burden of proof argument has appeal as an expedient solution it is not a completely satisfying basis for judicial invalidation of a longstanding method of public school financing. From this perspective, arguments for judicial action must be discounted somewhat by uncertainty about the present system's detrimental effect on the quality of education, and also therefore, by doubts of improving education by such invalidation.[60]

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[58]327 F. Supp. 844, 854-55. The court in *Hobson* was not concerned with a correlation between gross expenditures and quality of education, but rather with the specific differences in expenditures on teacher salaries, rated on a per pupil basis, between essentially "white" and "black" schools within the District of Columbia. The quality-expenditure issue in terms of teacher salaries per pupil was posed as the correlation or lack thereof between quality instruction and higher salaries. Phrasing the issue as "teacher salary per pupil" also raised the issue of the relationship between educational quality and class size or student-teacher ratio.

[59]*Id.* at 855.

[60]Professor Moynihan has suggested that:

> [t]he only certain result that will come from [a rise in educational expenditures, which he states *Serrano* will produce] is that a particular cadre of middle-class persons in the possession of certain licenses—that is to say teachers—will receive more public money in the future than they do now.

Moynihan, *Can Courts and Money Do It?*, N.Y. Times, Jan. 10, 1972, §E (Annual Education Review) at 24, col. 1. Note that by ordering equalization of teacher salaries per pupil between "white" and "black" schools, Judge Wright in Hobson v. Hansen, 327 F. Supp. 844 (D.D.C. 1971), allowed the school district the choice of transferring higher paid teachers from "white" schools to "black" schools or reducing the student-teacher ratio in the "black" schools. Although the evidence of correlation between class size and pupil

B. *The Relationship of Poor Districts to Poor People*

The second question raised by the wealth analysis underlying the *Serrano* holding centers on the supposed relationship between a school district's wealth, as measured by its real estate tax base, and the personal wealth of its people. For its wealth classification argument the court relied on United State Supreme Court "de facto wealth classification" cases in which states have been restricted in imprisoning indigents for failure to pay fines,[61] have been required to provide indigent criminal defendants with such things as transcripts[62] and attorneys for appeal,[63] and have been precluded from requiring the payment of a poll tax as a precondition to voting.[64] All of these cases, however, involved "wealth classifications" that operated against individuals, whereas *Serrano* involved school districts. The issue in *Serrano* would therefore be simpler if the wealth of school districts coincided with the wealth of its people, thus making poor districts aggregates of poor individuals.

Available statistics, however, do not indicate this hypothesized relationship between poor districts and

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performance does not seem significantly greater than that between average teacher salary and pupil performance, one's subjective sense is that the class size is the more significant factor to education. Both the intradistrict and racial aspects of *Hobson* also strengthened the case for judicial intervention.

[61]Williams v. Illinois, 399 U.S. 235 (1970); Tate v. Short, 401 U.S. 395 (1971).

[62]Griffin v. Illinois, 351 U.S. 12 (1956).

[63]Douglas v. California, 372 U.S. 353 (1963).

[64]Harper v. State Bd. of Elections, 383 U.S. 663 (1966).

poor people. One recent study of 223 school districts in eight states indicates that there is no substantial pattern of differences in real estate tax basis per pupil among seven categories of school districts: major urban core cities, minor urban core cities, independent cities, established suburbs, developing suburbs, small cities, and small towns.[65] It is true that the three-judge federal district court which invalidated the Texas school financing system in *Rodriguez v. San Antonio Independent School District* found that "those districts most rich in property also have the highest median family income and the lowest percentage of minority pupils, while the poor property districts are poor in income . . . ."[66] The basis for this finding was an affidavit submitted by plaintiffs and cited by the court. As a basis for the court's conclusion, this was a questionable source; a careful reading of the data contained in the affidavit creates grave doubts about the validity of its conclusions.[67]

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[65]*See* ALTERNATIVE PROGRAMS FOR FINANCING EDUCATION 83-89 (1971) (National Educational Finance Project vol. 5).

[66]337 F. Supp. at 282 (W.D. Tex. 1971).

[67]The *Rodriguez* court cited the affidavit as showing a median family income of $5900 in the 10 districts with the highest tax base per pupil and $3325 in the 4 districts with the lowest tax base per pupil. *Id.* at 282 n.3. The following are the study's figures:

Market Value of Taxable Property Per Pupil	Median Family Income From 1960	Per Cent Minority Pupils	State & Local Revenues Per Pupil
Above $100,000 (10 Districts)	$5900	8%	$815
$100,000-$50,000 (26 Districts)	4425	32	544
$50,000-$30,000 (30 Districts)	4900	23	483
$30,000-$10,000 (40 Districts)	5050	31	462
Below $10,000 (4 Districts)	3325	79	305

In the amicus brief filed in *Serrano* by the Harvard Centers for Educational Policy Research and for Law and Education, an attempt was made to avoid the absence of statistics correlating poor people and poor school districts, by defining the injured class as those poor people who also live in poor school districts.[68] Although the amicus brief never explains the basis for this definition of the injured class, it may be argued that the people in this narrow group are singularly disadvantaged because they have neither the advantage of a high tax base as do the poor in rich districts, nor the mobility[69] and private school alternatives of the more wealthy residents of poor school districts. The flaw in this approach is that defining the injured class in these terms considerably weakens the wealth classification argument. The system no longer can be said to discriminate against the poor but only against a certain segment of the poor. In fact, when the school finance system is viewed from this perspective, the chief beneficiaries of the system when the class is so defined

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Affidavit of Joel S. Berke at 6 (footnotes omitted).

The 5 category breakdown of school districts seems to be arbitrary, and it is only this breakdown which appears to produce the correlation of poor school districts and poor people. Even on this breakdown, however, the correlation is doubtful. Note the very small number of districts in the top and bottom categories. Even more significant is the apparent inverse relationship between property value and median income in the three middle districts, where 96 of the 110 districts fall. While the family income differences among the 3 groups of districts are small, they may be even more significant if categories are weighted by the number of districts in each. At the very least, the study does not support the affirmative correlation of poor school districts and poor people stated by the court and the affiant; this is, however, the study the court relied upon, and it is apparently the only study which purports to show such correlation.

[68]Brief for the Center for Educational Policy Research and the Center for Law and Education as Amici Curiae at 3 n.1.

[69]*Id.* 6 n.5.

would be those poor families who live in rich districts. Not only do they have a resource advantage over those who live in poor districts, but also, they get more school for fewer tax dollars than do their more wealthy neighbors in the rich districts. The relative advantage of the poor in rich districts is further increased by the very factors that arguably are the unique disadvantage of the poor in poor districts—their lack of mobility and private school alternatives. As with the wealthy in poor districts, the wealthy in rich districts are not as dependent on their district's public schools as their less affluent neighbors and thus not as benefited by living in a rich district under the present system.

Finally, to focus on aiding the poor who live in poor districts would probably require greater relief than that offered by *Serrano* and the subsequent cases. Under this analysis, the poor in districts that undervalue education under such equal wealth alternatives as district power equalizing would be just as disadvantaged as the poor who live in poor districts today. Their immobility and lack of private school alternatives would still uniquely disadvantage them as compared to the wealthy inhabitants of the same districts, and the poor in districts with greater school expenditures. A focus on the poor in poor districts would, therefore, require equalization of expenditures to avoid the hypothesized legal wrong.

Another complication in applying a district wealth classification theory is that any correlation that does exist between poor school districts and poor people

may vary from state to state. Also, it is quite possible that there is a greater correlation between the rural poor and poor school districts than there is between the urban poor and poor school districts. If this correlation is necessary to the legal analysis, the legitimacy of the *Serrano* result might very well vary from state to state. A decision by the United States Supreme Court, however, attempting to differentiate among the states, would be entirely inappropriate. It would be most unwise to have basically similar state systems held invalid or valid depending on where the state's poor lived, or more accurately, depending on judges' views of the difficult statistical analysis demonstrating a correlation between poor people and poor school districts.

A related failure to demonstrate a relationship between blacks or other racial minorities and poor districts is particularly disappointing to proponents of judicial action for whom the presence of such correlation would have significant legal effects.[70] One report notes that in California, over half the minority pupils reside in districts with above average assessed wealth per pupil.[71]

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[70] *See, e.g.*, Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971), in which statistical evidence of discriminatory distribution of municipal services along racial grounds triggered a "compelling state interest" test.

[71] PRIVATE WEALTH AND PUBLIC EDUCATION, *supra* note 22, at 356-57 n.47. The complaint in *Serrano* alleged that "[a] disproportionate number of school children who are black children, children with Spanish surnames, children belonging to other minority groups reside in school districts in which a relatively inferior educational opportunity is provided." 5 Cal. 3d at 590 n.1, 487 P.2d at 1245 n.1, 96 Cal. Rptr. at 605 n.1. Other than quoting this allegation as part of the complaint, however, the California court did not rely on it.

The affidavit relied on by the court in *Rodriguez*, 337 F. Supp. at 282

The absence of a correlation between poor or racial minorities and poor districts may be attributable to, among other factors, the failure of the property tax as a measure of a man's actual wealth. Most significantly, however, the reason for the absence of correlation is the location of industrial and commercial property, the presence of which increases a district's wealth by increasing its tax base, without a necessary increase in school population.

These facts raise a basic question of the effect of *Serrano* and its progeny. While the case has been hailed on theoretical egalitarian grounds, many of its proponents are more concerned with the practical problem of getting more money for urban education. While some major cities with high concentrations of poor people are financially poor school districts, others, such as New York, San Francisco, and Philadelphia, have relatively high tax bases as compared to their respective state averages.[72] They also spend more per pupil than their respective state averages. Therefore, if current expenditures for education were equalized on a statewide basis, major cities in many areas would have

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n.3 (*see* note 67 *supra*), however, did state that, of the districts sampled in Texas, the richest districts had 8% minority pupils while the poorest districts had 79% minority pupils. Again, however, the validity of this conclusion based on the study's figures is doubtful. The "correlation" only exists for the 10 richest and 4 poorest districts. This pattern disappears in the middle groups which include 96 of the 110 districts. Whatever correlation there is between the percentage of minority people and the tax base wealth of a school district in Texas may reflect the rural nature of Texas minority life or some other state peculiarity.

[72]Another reason, in addition to the presence of industrial and commercial property, for the absence of correlation between major cities and poor districts may be the relatively large number of students in urban areas attending nonpublic schools.

less money to spend than they have now.[73] The same would be true if wealth were equalized with tax rates remaining the same.

It is possible that equal wealth systems may, by their nature, result not just in equalization of current expenditures but also in over-all increased spending for education. It may be that under a scheme of centralized financing it would be politically easier for state legislatures to raise taxes, and thereby increase total school expenditures, than it would be for local school board members. The latter are more visible to the taxpayer and may, indeed, have to get voter approval for tax increases or bond issues. Under district power equalizing Professor Brest suggests that, because it is politically impossible for legislators to vote to take locally collected taxes away from a district, tax rate and expenditure levels would have to be equalized at the highest figures previously available—that is, what the wealthiest district produced from its tax rate.[74] The consequence of this would be enormous increases for

[73]An equalization principle that operated beyond the sphere of property tax base wealth could work against the cities in another area. Local nonproperty taxes, though limited in significance to a few states, *see* note 23 *supra*, may also disproportionately favor urban centers. In a study of Alabama, Kentucky, Louisiana, Maryland, New York, Pennsylvania, and Tennessee for 1968-1969, school districts were classified into central city, suburban, independent city, and rural districts. It was found that in 5 of the 7 states (Kentucky, Louisiana, Maryland, Pennsylvania, and Tennesseee) the rural districts received the least amount of revenue per pupil from such local nonproperty taxes; in 4 of the 7 states (Kentucky, New York, Pennsylvania, and Tennessee) the central city districts received the most revenue per pupil. The average ranking for the 7 states showed that the central city school districts on the average received the most revenue per pupil from local nonproperty taxes, followed in order by suburban, independent city, and rural districts. ALTERNATIVE PROGRAMS FOR FINANCING EDUCATION 186-87 (1971) (National Educational Finance Project vol. 5).

[74]Brest, Book Review, 23 STAN. L. REV. 591, 596 (1971).

education. So enormous, in fact, that Professor Brest uses it to demonstrate the improbabilty of any state ever adopting district power equalizing.

Despite these hopes for a greater investment in education, the history of state legislative treatment of urban education, the serious economic difficulties currently facing state government, and the domination of state governments by r u r a l and suburban interests make it difficult to realistically predict that *Serrano* will result in greater total expenditures for education. And if total expenditures do not increase, then the cities, in their relatively wealthy status stand to gain little from the *Serrano* decision.[75]

C. *"Wealth Classifications" as Applied to School Districts*

In addressing the problem of correlating poor people and poor school districts in its legal analysis, the California Supreme Court first relied on the procedural posture of the case and noted again that the complaint alleged a correlation between poor people and poor districts.[76] The court did not quote the complaint nor state the basis, if any, given for the allegation. The

[75]It may aid rural education which would help the rural poor. It may also be argued that, when relieved of the obligation of financing education, by the adoption of a centralized financing scheme for education, urban areas will be more able to raise greater revenues for their other needs. This assumes either that the state financing scheme will not take the same revenue that the urban areas now take for education, or that taxpayers will be more responsive to local taxation for other needs if their education taxation goes to the state. Such assumptions appear unrealistic; present indications are that statewide financing for education will continue to be based on the same real property tax as that on which local taxation presently is based.

[76]5 Cal. 3d at 600-01, 487 P.2d at 1252, 96 Cal. Rptr. at 612.

court did not rest on this procedural argument, however, but went on to state:

> More basically, however, we reject defendants' underlying thesis that classification by wealth is constitutional so long as the wealth is that of the district, not the individual. We think that discrimination on the basis of district wealth is equally invalid. The commercial and industrial property which augments a district's tax base is distributed unevenly throughout the state. To allot more educational dollars to the children of one district than to those of another merely because of the fortuitous presence of such property is to make the quality of a child's education dependent upon the location of private commercial and industrial establishments. Surely, this is to rely on the most irrelevant of factors as the basis for educational financing."[77]

There are, however, serious problems with this application of the wealth discrimination cases to government entities, as distinguished from individuals. Since district wealth is measured by the real estate tax base, and the development of a district's real estate is a variable factor, the possibility of voluntary "poverty" is more acute for government entities. Throughout the opinion, the court assumed that a district's wealth was a "fortuitous" given, beyond a district's control, and not subject to voluntary choice.

While this may generally be correct, it is increasingly true in our environmentally conscious age that

[77] *Id.* at 601, 487 P.2d at 1252-53, 96 Cal. Rptr. at 612-13 (footnote omitted).

a rural or suburban district might voluntarily exclude industrial or commercial development that would increase its wealth by increasing its tax base, without a corresponding increase in its school population.[78] Under centralized school financing this district would not be deprived of school revenues, because revenue would be independent of local decisions affecting the tax base. Under an equal wealth alternative, such as district power equalizing, a decision to exclude new development would likewise not affect revenues, which would be based on a district's choice of tax rate, not wealth. Yet this choice would be logically indistinguishable from the choice of tax rates, with its corresponding benefit or detriment to the district's school revenues, permitted, and indeed encouraged by district power equalizing.[79]

Perhaps it is desirable that districts be able to choose to remain at a low level of wealth without adversely affecting school revenue. This would have the beneficial effect of freeing a locality from the obligations of economic development, thus benefiting the area ecologically. On the other hand, it may be unfair to treat bucolic areas that choose not to expand rapidly

[78]School districts, as special function governmental units, rarely are delegated powers broader than those necessary to administer the school and raise funds by taxation and bond issues. General function units, such as municipalities and townships, are usually the smallest entitles delegated the power over development suggested in the text. Yet, to the extent that general function units coincide with school districts, or to the extent that the smaller units have significant political power within the general unit, one may accurately speak of school district political choices.

[79]Some practical differences, of course, are that a tax rate choice can be redetermind on a periodic basis, is unambiguous, and is clearly visible; whereas wealth choices have more enduring consequences, may be ambiguous as to their basis, and of low visibility.

the same as highly developed areas that have attendant congestion, pollution, and other problems that create a heavier tax burden for the urban dweller. Additionally, widespread decisions not to allow local development could seriously undermine a program of decentralization of industry and commerce. These economic and social effects of *Serrano* obviously need more exploration than the courts and commentators thus far have offered.

The wealth classification precedents employed by the *Serrano* court present another problem. The principle contained in this group of United States Supreme Court precedents is ambiguous. In the criminal procedure cases the Supreme Court required the free provision of transcripts[80] and attorneys[81] on the basis of the indigency of the accused[82] On the other hand, the Court struck down the use of the poll tax as a precondition to voting in all cases, without regard to financial ability to pay the tax.[83] The United States Supreme

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[80]Griffin v. Illinois, 351 U.S. 12 (1956).

[81]Douglas v. California, 372 U.S. 353 (1963).

[82]*See also* Williams v. Illinois, 399 U.S. 235 (1970); Tate v. Short, 401 U.S. 395 (1971), relieving only indigents of the penalty of imprisonment because of their inability to pay fines; Boddie v. Connecticut, 401 U.S. 371 (1971), relieving only indigents of the obligation to pay court fees and costs incidental to a divorce proceeding.

[83]Harper v. State Bd. of Elections, 383 U.S. 663 (1966); *see* Lindsey v. Normet, 40 U.S.L.W. 4184 (U.S. Feb. 23, 1972), in which the Court held unconstitutional an Oregon statute that required a tenant appealing an eviction judgment to post a bond for twice the rental value of the premises from the commencement of the action in which the judgment was rendered until the final judgment on appeal. In so holding, the Court invalidated the high bond requirement for all tenant-defendants, regardless of their ability to pay the bond.

See also Bullock v. Carter, 40 U.S.L.W. 4211 (U.S. Feb. 24, 1972), concerning the validity of high filing fees for entry into Texas nominating primaries. The decision is ambiguous as to whether the Court held the system unconstitutional as applied to all candidates, including those who could raise

Court has subsequently cited these cases indistinguishably as "de facto wealth classifications," without apparent recognition of the difference between saying that no one can be made to pay for a given service, and saying that one who cannot afford to pay for a given service cannot for that reason alone be deprived of it."[84]

The former formula of requiring no payment from anyone has the advantage of encouraging all—rich, poor, and in-between—to avail themselves of the service. This is the aim, for example, of free public education and, perhaps, the reason for voiding the poll

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the high fees, or only held that those who, because of their indigency, could not raise the high fees had to be relieved from doing so. The Court did stress the issue of the "inability" (without defining the term) of some candidates to pay the fee and thus indicated that it could be constitutionally permissible for Texas to maintain its general fee system and except only those with this "inability."

[84]Professor Frank Michelman, in his article, *supra* note 40, cited by the *Serrano* court, has argued persuasively that these cases are better understood as substantive due process "minimum protection" cases rather than as equal protection cases. The distinction between "minimum protection" and "equal protection" is set forth by Michelman as "vindication of a state's duty to protect against certain hazards which are endemic to an unequal society, rather than vindication of a duty to avoid complicity in unequal treatment," *Id.* 9 (emphasis omitted). Minimum protection thus means state fulfillment of those just wants (or fundamental rights) that our society cannot constitutionally accept as being subject to normal market risks of nonsatisfaction. This changes the focus of inquiry from "wealth classification" to the determination of what are just wants and what is meant by their nonsatisfaction.

Justice Harlan adopted the Michelman approach in his concurring opinion in Williams v. Illinois, 399 U.S. 235, 259 (1970), and employed it for the Court in Boddie v. Connecticut, 401 U.S. 371 (1971) over the objection of Justice Douglas. Justice Harlan's attempt to shift the Court to the Michelman due process approach has apparently been unsuccessful. *See* Bullock v. Carter, 40 U.S.L.W. 4211 (U.S. Feb. 24, 1972).

In discussing the minimum protection thesis, Professor Michelman notes the difference in treatment discussed in the text between the poll tax and criminal procedure cases. H does not, however, appear to offer a rationale for this difference. Michelman, *supra* note 40, at 24-26. He suggests that under his minimum protection theory, the state's obligation is normally satisfied "by free provision to those and only to those who cannot satisfy their just wants out of their own means." *Id.* 26. Nor would his theory require a graduated schedule of payments above the indigency threshold. Justice Harlan in his concurring opinion in *Williams v. Illinois* pointed out that logical consequence of the Court's equal protection theory would require a graduated schedule of payments for those above the indigency level. 399 U.S. at 261.

tax as a prerequisite for voting. On the other hand, an exemption from payment only for the poor results in a greater redistribution of wealth than does a no-payment principle.

To view the problem only in terms of those who can pay all or those who can pay nothing is also to oversimplify. One basic prerequisite is a determination of what level of sacrifice is required before one can say that a given individual or group is "unable" to pay for a service. Again, the leading cases have not dealt with this pervasive problem. Perhaps the level of sacrifice required of an individual can also be related (inversely) to the degree that society desires that everyone avail himself of the service; that is, the more society wants the service used, the less sacrifice is required for it.[88] Even this formula may need reevaluation to the extent that sacrifice is also considered to be a significant measure of the value of a service to an individual and recognition of that value by the individual increases the societal result desired.

The ambiguous result presented by the individual wealth discrimination cases is compounded when applied, as in *Serrano,* to an aggregation of individuals —a school district. In this setting, level of sacrifice may become useless as a guideline for determining when to apply the no-payment principle. Governmental

[88] Under Professor Michelman's theory, Michelman, *supra* note 40, absent the "remote" possibility that one might deliberately waive his claim to the satisfaction of a just want, a person is always entitled to satisfaction of his just wants regardless of the sacrifice he is or is not willing to make to attain such satisfaction. *Id.* 14. He does not, however, satisfactorily explain why this is so.

units may have a greater array of demands on resources than do individuals; districts may be able to reallocate priorities in a way that individuals cannot. Arguably, street cleaning or hospital construction can always be cut back to pay for education. More significantly, a poor district's ability to raise its taxes or create revenue through borrowing may be so much greater than the ability of a poor person to raise revenue that the issue of level of sacrifice becomes meaningless.

The California Supreme Sourt recognized the difficulty of deriving from the wealth classification precedents a rule that, as applied to districts, would define the limits of sacrifice—determine which districts could not, and therefore need not, pay. One response by the court was to assert that "as a statistical matter, the poorer districts are financially unable to raise their taxes high enough to match the educational offerings of wealthier districts."[86] The authority given for this statement was an unquoted reference to a Legislative Analyst study. The court, rightly, was unwilling to rest on that.[87] Rather, it relied primarily on the proposition

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[86]5 Cal. 3d 599-600, 487 P.2d at 1251, 96 Cal. Rptr. at 611.

[87]Under the California financing system there is no limit on the rate at which, with voter approval, a district can choose to tax itself. Thus, there is no legal limit on a district's ability to raise its revenue. This may be contrasted with the situation in Florida which was presented to a 3-judge court in Hargrave v. Kirk, 313 F. Supp. 944 (M.D. Fla. 1970), *vacated on other grounds per curiam sub nom.* Askew v. Hargrave, 401 U.S. 476 (1971). Florida, in its "Millage Rollback Act," provided that, in order to qualify for state subvention, a school district could not tax itself at a rate greater than 10 mills. The district court accepted the argument that this limit was invalid because it put a limit on tax rates (or penalized districts for high rates), thus precluding school districts with lower tax bases from producing the same revenue as those with higher bases. The district court invalidated this limit on the grounds that there was no rational basis for it. In this the court was

that even if poorer districts could achieve expenditure parity by higher tax rates, "the richer district is favored when it can provide the same educational quality for its children with less tax effort."[88]

This statement suggests, that as applied to districts, the evil to be cured is not merely absolute deprivation, but relative disadvantage in ability to pay. This theory goes well beyond the de facto wealth cases that relieved only indigents of the obligation to pay for certain services.[89] Obviously, within the nonindigent category, the wealthier can purchase the service with less effort than the less wealthy. But the precedents do not require free provision of services to all or graded fees based on the ability to pay of those above the indigent cutoff line.

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patently in error. The state does have a rational purpose in preserving its own sources of revenue and protecting the taxpayers from overtaxation by their local school districts.

The court did accurately recognize, however, that the limit meant that districts with lower tax bases could not, even by taxing themselves more, equalize school expenditures with wealthier tax base districts. Yet, there is a paradoxical effect here. Florida argued in the United States Supreme Court that the limit was intended to be, and was, equalizing in a way that benefited poorer school districts. It had this effect, because for each percentage increase in tax rate, the wealthier district could produce more dollars per pupil than the poor one. To illustrate this, consider the hypothetical case of 2 school districts, *A* with $100,000 assessed valuation per pupil and *B* with $50,000 assessed valuation per pupil. If a 1.0% limit were put on both *A* and *B*, *A* could produce $1000 per pupil and *B*, $500, a difference of $500. By contrast, if there were no limit, and both *A* and *B* taxed at 1.5%, *A* would have $1500 and *B*, $750, a difference of $750, and so on. Thus, while holding *A* down, the limit also holds down the possible dollar divergence between *A* and *B*.

The Supreme Court vacated and remanded the case, on the question of whether the district court should have refused to exercise jurisdiction under the abstention doctrine.

[88]5 Cal. 3d at 599, 487 P.2d at 1251, 96 Cal. Rptr. at 611.

[89]It would also go beyond the court's apparent limitation of Proposition 1 to cases in which there are expenditure differentials, and underlines the taxpayer orientation of Proposition 1. *See* note 28 *supra*.

When applied to school districts, a constitutional standard of graded ability to pay becomes an even greater innovation than if it were applied to individuals. When dealing with school districts we are dealing with *taxation*. Let us assume, for example, equal spending per pupil among school districts. Each school district raises its required revenue by dividing its expenditure total by the number of its inhabitants (or the number of its families). It then assesses each inhabitant (or family) a per capita share of the total revenues required and levies a tax accordingly. If the state is redistricted so that aggregate individual wealth of each district is the same, the system clearly would not violate the *Serrano* holding because no school district, *qua* district, would have to make a greater effort than any other to raise the required revenues. Nevertheless, is this the relevant issue?

Burdens of taxation fall not on school districts, but on taxpayers. Even though districts are equalized in wealth consistent with *Serrano,* individuals or families are not. It would make no difference to the poor taxpayer who had difficulty meeting his tax burden, that there were an equal number of poor people with the same difficulty in other school districts. If the school districts in the example did v a r y in the aggregate wealth of their residents this system might violate *Serrano;* one could say that it was easier for the school district with greater aggregate wealth to raise its revenue than for the poorer one to do so. This approach still misses the point. The real problem is the individ-

ual taxpayer's difficulty in paying his tax bill. If *Serrano* labels relative deprivation among districts unconstitutional, then does its logic not require elimination of disproportionate sacrifice among those who pay the tax? Does the former proposition even make any sense without the latter?

If there is a constitutional vice created by the differential ability of taxpayers to meet their obligations, does this then mean that proportional, or even progressive, taxation is constitutionally compelled? It is doubtful that the *Serrano* court meant to suggest this outcome.[90] Nevertheless, without such a conclusion it is difficult to understand why it is unconstitutional to have a system whereby one district can more easily raise revenue than another. It is indeed probable under present financing systems, including that of California, that the average resident of a rich district pays higher taxes, in terms of gross dollars, for his schools than does the average resident of a poor district, despite the fact that the resident of the rich district is taxed at a lower rate.[91] This may be the result of the

[90]The complaint contained counts by both students and parent taxpayers. The court's entire analysis was directed to the student plaintiff count, however. In addressing itself, at the end of the opinion to the dismissal of the taxpayer count, the court did not discuss the independent claims of the taxpayers, *qua* taxpayers, that, being in a poor district, they were required to pay taxes at a higher rate to secure the same or less educational expenditures. It reversed the dismissal of the taxpayer count solely on the basis that the taxpayer plaintiffs had incorporated the unequal education allegations of the student plaintiffs into their count, and that, under California law, they had standing to assert the students' educational interests. 5 Cal. 3d at 618, 487 P.2d at 1265, 96 Cal. Rptr. at 625.

[91]In addition, taxpayers might very well be paying for the education of their children in the prices they pay for their homes, as well as in their tax payments. To the extent that the quality of education in a given district is disproportionately high in relation to real estate taxes paid by the home owners of the district, this fact should be reflected in the price of the district's homes.

higher assessed valuation and, perhaps, larger average property holdings of the individual taxpayers in the rich district. A correlation may even exist between the amount of tax dollars paid by the average resident of a district and the educational expenditures of that district. If this is so, the difficulty is not with disproportionate payments but with inequitable taxation, not only in the hypotheticals above, but also in the existing financing schemes. The logic of *Serrano,* which invalidated these existing financing schemes, may therefore require the wealthy taxpayer to bear a greater burden than just having to pay more tax dollars than the poor. Instead it may demand at least a proportional tax system, and possibly one that is progressive.

The difficulties of relating the wealth of individuals to the wealth of districts, of applying wealth classification precedents to districts, and of finding a logical stopping place for the equality concepts involved, are not the only problems with the wealth classification analysis of *Serrano v. Priest.* In fact, the entire foundation of the court's constitutional argument may well have been destroyed by a United States Supreme Court decision which the *Serrano* court disturbingly ignored. In *James v. Valtierra*[92] the Supreme Court implied that even the existence of "invidious classifications on the basis of wealth" are insufficient to trigger the compelling interest standard of the new equal protection.

In *Valtierra,* the Supreme Court upheld a California constitutional provision that no low-rent housing

[92] 402 U.S. 137 (1971.)

project could be constructed by a state public body unless the project had been approved by a majority of those voting at a local election. Refusing to apply strict scrutiny, the Court upheld the mandatory referendum on the ground that it was rationally related to the legitimate purpose of achieving popular participation in expenditure decisions. Justice Marshall, in a vigorous dissent, noted that the mandatory referendum provision discriminated solely against the poor. "Publically assisted housing developments designed to accommodate the aged, veterans, . . . or any class of citizens other than the poor, need not be approved by prior referenda."[93] Nevertheless, the Court ignored *Douglas, Harper,* and other cases that had deemed wealth classifications or discriminations against the poor as inherently suspect.[94] The *Valtierra* decision casts an unavoidable shadow over the first half of the constitutional analysis employed in *Serrano v. Priest.*

III. Education: A Fundamental Interest?

A. *Relationship Between Fundamentality and Impairment of an Interest*

The inherently suspect wealth classification argument is only one-half of the California Supreme Court's constitutional attack on school financing. The court also relied on its conclusion that education is one of those fundamental interests that, when conditioned on wealth classifications, will trigger special scrutiny

[93] *Id.* at 144 (footnote omitted).
[94] *See* notes 61-64 *supra.*

requiring a compelling state interest. The court concluded that education is a fundamental interest based on its importance, and its similarity to interests previously held to be fundamental. The court's analysis proceeded on the unstated assumption that having already found a suspect trait—wealth classification—if it is determined that education is fundamental, then the system of education financing here involved must meet a compelling interest test to survive constitutional scrutiny. This analysis was developed, however, without any attempt by the court to correlate the various reasons for determining education to be fundamental with the constitutional vice here perceived, unequal educational expenditures based on differential tax bases among school districts.

The *Serrano* court seems not to have perceived this as an issue at all. It was not an issue in the criminal process and voting cases decided by the United States Supreme Court and discussed above,[95] because those were cases of total deprivation of the service involved. When the effect of state action is total deprivation of the service to the individual, whatever fundamental aspects of the service exist are necessarily eliminated.[96] On the other hand, where a service is only impaired

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[95] *See* notes 80-84 *supra* & accompanying text.

[96] It may be possible for a service to be held fundamental based solely on general societal benefit or externalities unrelated to any particular individual enjoying it. Because society's interest would be in the level of the service enjoyed by people in the aggregate, arguably this interest would not be impaired by inequality among society's components. If this were so, a total deprivation limited to a number of individuals might not impair the bases of fundamentality. This would seem, however, to be a very rare situation of fundamentality, and has not yet arisen in any litigation.

rather than total withheld, it would seem necessary to determine whether or not the impairment does affect the basis of the fundamentality of the service.

As an illustration, assume that a state decided to provide all students with free education only through eighth grade, and thereafter to charge fees so that only those who could afford to pay could attend. In analyzing this hypothetical in terms of the fundamentality of education, one might conclude that all the attributes of education that make it fundamental are satisfied by attendance only until eighth grade. If that were so, the fundamentality of education would be irrelevant to the constitutionality of any state decision on post-eighth grade education. In the context of *Serrano,* such an analysis would require determination of the relationship between the various grounds for the court's conclusion that education is fundamental, and the inequalities of interdistrict expenditures based on differences in taxable wealth among districts.

B. *Is Education a Fundamental Interest?*

In its analysis of education's fundamentality, the California Supreme Court first recognized that there was no direct authority for the proposition that education is such a fundamental interest.[97] The court then went on to make three basic arguments for the fundamentality of education, based on:

1. the importance of education to the individual and society;

[97] 5 Cal. 3d at 604, 487 P.2d at 1255, 96 Cal. Rptr. at 615.

2. a comparison of education with the rights of criminal defendants and voting rights that have been held to be fundamental; and

3. the distinguishing of education from other governmental functions that might arguably be as fundamental as education.

1. The "Importance of Education" Argument

The court first argued for the fundamentality of education because it is "a major determinant of an individual's chances for economic and social success in our competitive society; . . . [and] a unique influence on a child's development as a citizen and his participation in political and community life."[98] In support of these statements the court did not cite any social science data but rather relied on language in prior cases, principally the well-known statements in *Brown v. Board of Education*[99] concerning the importance of education in today's world.

As stated above, however, the court did not relate these attributes of education to the effect of interdistrict disparities in expenditures. Its only reference to the issue was an assertion that, while California precedents "involved [only] actual exclusion from the public schools, surely the right to an education today means more than access to a classroom."[100] For com-

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[98] *Id.* at 605, 487 P.2d at 1255-56, 96 Cal. Rptr. at 615-16.

[99] 347 U.S. 483, 493 (1954).

[100] 5 Cal. 3d at 607, 487 P. 2d at 1257, 96 Cal. Rptr. at 617 (footnote omitted).

parison the court quoted language in *Reynolds v. Sims*,[101] where the Supreme Court asserted that the right to vote is impaired not only by bars to voting but by dilution of power by malapportionment. *Sims*, however, is not relevant to the issue posed. The real issue in the voting case concerned individual political power, an interest clearly and directly impaired by the evil to be remedied—malapportionment. There is no a priori clear connection between those characteristics of education quoted above by the court to establish its fundamentality, and financing differentials; nor do existing data show such a connection.

In terms of an individual's social and economic success, there are data, although hardly incontrovertible, correlating length of school attendance and economic attainment.[102] However, such data do not correlate economic or social attainment with differential expenditures and, as indicated above, the whole issue of correlating economic inputs and educational outputs is, at best, unclear. As to responsible citizenship there again are no empirical data to show a correlation with differential expenditures. One's a priori judgment here might be that there is no such correlation.

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[101] 377 U.S. 533, 562-63 (1964).

[102] *See* EDUCATIONAL INVESTMENT IN AN URBAN SOCIETY (M. Levin & A. Shank eds. 1970), which contains summaries and analyses of a number of studies.

2. Education Compared to Previously Recognized Fundamental Rights

The second part of the court's argument that education is fundamental was a comparison of education with those rights the United States Supreme Court already has held to be fundamental: various rights of criminal defendants and voting. The court recognized the uniqueness of an individual's interest in liberty which operates in the criminal procedure area, but suggested that education might well be as important because it has "far greater social significance than [such procedural protections as] a free transcript or a court-appointed lawyer."[108] Except for an aside that education may reduce the crime rate, however, the *Serrano* court did not really try to equate education with the rights of criminal defendants. Nor should it. The protection of the procedural rights of criminal defendants is not solely recognition of a unique right to liberty but a recognition of the need for protection against the ultimate state attempt to curtail that liberty. The individual, in classic terms, is defending himself against the state. This protection of citizen from government is the essence of the constitutional restraints contained in the Bill of Rights and the fourteenth amendment. Unlike the state's function of giving children an education, in the criminal process cases the state fulfills its function by taking something—the liberty of the criminal. Thus these cases do not support

[108] 5 Cal. 3d at 607, 487 P.2d at 1258, 96 Cal. Rptr. at 618.

the proposition that there are fundamental affirmative rights to the provision of government services.

The right to vote is an affirmative right ensured by the state; it is, however, the ultimate political right in a democratic society in a way that makes it sui generis. Voting ensures the right to all other rights—including education—to the extent achievable through the political process. Public education, though certainly relevant to political access, is not intrinsic to democracy. Finally, the most obviously distinctive fact about both criminal procedural safeguards and voting is that they find expression in the structure of the Federal Constitution in a way that education does not.[104]

3. Education Compared to Other Government Functions

In addition to extolling education and comparing it with acknowledged fundamental rights, the court in *Serrano* felt compelled to distinguish education from other services and interests. This ability to find education unique is central to its fundamentality. If everything is fundamental, nothing is. Moreover, the uniqueness of education is an essential limitation on the holding in the case. The court was most anxious to refute the argument that if differences in spending on education attributable to wealth differentials among geographical areas are unconstitutional, then so are similar differentials in other governmental services.

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[104] *See* Brest, *supra* note 74, at 606.

In attempting to distinguish education from other governmental services the court relied on five factors:[105]

1. Education is necessary to preserve an individual's opportunity, despite a disadvantaged background, to compete successfully in the economic market place, thus maintaining the existence of "free enterprise democracy."

2. Education is "universally relevant." Every person benefits from education though not everyone finds it necessary to use other governmental services like the police or fire department.

3. Public education occupies much of an individual's youth—between ten and thirteen years. Few government services have such "sustained, intensive contact" with the individual.

4. No other government service molds the personality of society's youth as does education.

5. Education is compulsory.

Again, there is the difficulty of relating these distinguishing features of education to spending differentials. The unproven relationship of educational spending to social and economic success has already been discussed.[106] The universality and prolonged nature of education were used expressly to distinguish it from police and fire services. The universality of *public*

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[105] 5 Cal. 3d at 609-10, 487 P.2d at 1258-59, 96 Cal. Rptr. at 618-19.
[106] *See* text accompanying notes 98-102 *supra*.

education is overstated, however. Although there are economic limitations on its use, the alternative of private education is available. More significantly, police and fire protection are also universal and sustained. Their protective attributes do not consist solely of responding to cries of distress, but consist also of the security present on a daily, continuous basis in an individual's surroundings. Thus, they cannot be said to be less universal or of a shorter duration than education.

Reasons four and five do distinguish education, at least in degree, from police and fire. This fact does not satify the question of what relationship these factors have to differential expenditures. The major thrust of the argument that education molds personalities and that it does so with the force of governmental compulsion behind it, would appear to be directed not against financing differentials, but against the danger to a free society in having the government effectively control and monopolize this crucial mind forming process. As such it would argue much more for the easier availability of diverse educational experiences, for example, through a tuition voucher system, than for equality of expenditures.[107]

The compulsory nature of education merits further discussion.[108] It was argued that education is funda-

[107]It may be argued that the personality molding function of education is peripherally related to first amendment rights. The difficulties of relating this factor to a need for equal expenditures would still apply to the argument, however.

[108]In assessing the applicability of *Serrano* on a nationwide basis, it should be noted that education is not universally compulsory in this country. Mississippi

mental to the individual because by making it compulsory the state has designated its importance. On analysis, however, this does not seem convincing. The reasons for making education compulsory are two: (1) people might not otherwise avail themselves of this service; and (2) the value of freedom of choice is less applicable here because the choice of school attendance would not be the child's, but his parents'. This latter, parens patriae reason presumes that the state is no worse a decisionmaker for a child than are his parents, and that a state choice of compulsory schooling provides a foundation for later choice by the child.

The first reason, that education is compulsory because otherwise people would not avail themselves of the service, does not primarily demonstrate a judgment of importance to the individual. Indeed, the need to make education compulsory to be certain that all will avail themselves of it might indicate its relative unimportance to the individual; an opposite determination that there is no need to make a service compulsory could reflect the belief that all individuals, recognizing the importance of the service, would use it.

The "importance" reflected in the societal decision to make education compulsory does not represent the value choice of the individual, but rather, of society. It may be that the court was here finding the individ-

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and South Carolina do not have compulsory school attendance laws and Virginia has a local option system. Moreover, compulsory school attendance is generally limited to those between the ages of 7 to 16, whereas one is entitled to attend school generally from ages 6 to 21. *See* Goldstein, *The Scope and Sources of School Board Authority to Regulate Student Conduct and Status: A Nonconstitutional Analysis*, 117 U. PA. L. REV. 373, 393-94 n.74 (1969).

ual's interest in education to be fundamental because the external benefits of education are valuable to *society*. The flaw in that approach is that society has already decided what benefits it wants from education by legislative determination; it does not need judicial intervention.

Nor does the second reason for making education compulsory—the parens patriae reasoning—necessarily indicate a judgment of education's unique importance to the individual. Rather, it relates to the peculiar situation of the child, an individual for whom someone else, parent or state, must make a choice.[109]

While the reasons for making education compulsory do not therefore argue that education is fundamental, there remains the significance of compulsory attendance itself.

Initially, it should be remembered that enrollment in public school is not required. The option of private schooling is constitutionally protected.[110] On the other hand, private school is a viable option only for those who can easily afford it, or who feel strong social, political, or religious needs that persuade them to make the sacrifice necessary to pay for private schooling. The *Serrano* court stated that the freedom to attend private schools "is seldom available to the indigent. In this context, it has been suggested that 'a child of the

[109]The validity of these rationales for compulsory school laws has been challenged in the recent decision of State v. Yoder, 49 Wis. 2d 430, 182 N.W.2d 539, *cert. granted*, 402 U.S. 994 (1971).

[110]*See* Pierce v. Society of Sisters, 268 U.S. 510 (1925).

poor assigned willynilly to an inferior state school takes on the complexion of a prisoner, complete with a minimum sentence of 12 years.' "[111] While this statement embodies some underlying truths, it falls short of persuasiveness when applied to interdistrict differentials in expenditures.

As discussed above, the correlation between expenditure levels and quality of education is unclear,[112] and there is no demonstrated correlation between "a child of the poor" and school districts with low real property tax bases.[113] Moreover, the argument that compelled attendance requires equal expenditures seems to be premised on a type of "right to treatment"—the notion that restriction of freedom for a specified purpose obligates the state to satisfy that purpose.[114] Yet this right would only require a minimum level of treatment to justify curtailing a child's liberty, or more realistically, his parents' liberty. Such a minimum right to treatment may not be in question at all under the California foundation plan guarantee and, if it is, it is subject to the problems discussed above of court determination of the minimum level of a foundation guarantee system. A child compelled to go to a poor school (rather than not compelled to go to school at all) is not hurt by that compulsion vis-a-vis another

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[111] 5 Cal. 3d at 610, 487 P.2d at 1259, 96 Cal. Rptr. at 619 (quoting from Coons, Clune & Sugarman, *Educational Opportunity: A Workable Constitutional Test for State Financial Structures*, 57 CALIF. L. REV. 305, 388 (1969)).

[112] *See* text accompanying notes 47-52 *supra*.

[113] *See* notes 65-67 *supra* & accompanying text.

[114] *See, e.g.*, Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971); *Symposium—The Right to Treatment*, 57 GEO. L.J. 673 (1969).

child compelled to go to a better school. He is only hurt by that compulsion if that poor school is worse than no school.

In discussing the uniqueness of education, the *Serrano* court, while trying to distinguish education from police and fire protection, did not even consider a comparison between education and provision of the essentials of life, such as food, clothing, and shelter. Such a comparison would seem imperative, for in *Dandridge v. Williams*[115] the United States Supreme Court upheld welfare grant restrictions on a traditional rational basis test, not the compelling interest test employed by the Supreme Court in protecting fundamental interests. This was done despite prior dictum that subsistence was a fundamental interest.[116]

The *Dandridge* opinion does not expressly deny that subsistence is a fundamental interest. Rather, it states that welfare legislation, when not involved with a constitutionally protected freedom such as interstate travel, is not subject to a compelling interest test because it is "a state regulation in the social and economic field . . . ."[117] Whether welfare regulation is not subject to a compelling interest test because it does not involve a fundamental interest or because it does involve economic and social regulation, the result in *Dandridge* creates difficulties for applying a compel-

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[115]397 U.S. 471 (1970).

[116]*See* Goldberg v. Kelly, 397 U.S. 254, 264-65 (1969); Shapiro v. Thompson, 394 U.S. 618 (1969).

[117]397 U.S. at 484; *accord*, Richardson v. Belcher, 404 U.S. 78 (1971).

ling interest test in *Serrano*. It is hard to argue that an affirmative right to education is more important than an affirmative right to subsistence. Education also shares the status of welfare as being primarily an economic and social regulation despite its avowed mind-forming purpose. Most of the reasons given by the *Serrano* court for the fundamentality of education relate to economic or social factors. Moreover, as noted by Professor Brest, "it is not obvious that educational finance systems embody economic judgments that are any less complex, intuitive, and ultimately nonjusticiable than those inherent in welfare legislation."[118]

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[118]Brest, *supra* note 74, at 615. The recent Supreme Court decision in Palmer v. Thompson, 403 U.S. 217 (1971), in which the Court upheld the right of a city to close its municipal swimming pools rather than operate them on an integrated basis, is also relevant to the issue of the fundamentality of education. In so holding, the Court distinguished prior cases refusing to permit a school district to close its schools in order to avoid a desegregation order. The Califor Supreme Court quoted a statement of the majority opinion in *Palmer* distinguishing swimming pools from schools: "Of course that case [a school closing case] did not involve swimming pools but rather public schools, an enterprise we have described as 'perhaps the most important function of state and local governments.' Brown v. Board of Education, *supra* at 493." 5 Cal. 3d at 609 n.26, 487 P.2d at 1258-59 n.26, 96 Cal. Rptr. at 618-19 n.26.

That quotation was taken out of context by the California court, and when the entire case is reviewed, it is clear that the majority opinion and a number of other opinions in the case purposefully refused to draw a distinction between schools and swimming pools that would give greater constitutional protection to the former. The quotation cited above was from a footnote in the *Palmer* opinion in which Justice Black, writing for the Court, sought to distinguish a prior summary affirmance of a lower court decision invalidating Louisiana statutes empowering the governor to close any school ordered to integrate, or to close all schools in the state if one were integrated. The first difficulty with the quotation is that the sentence following it in the *Palmer* footnote stated: *"More important,* the laws struck down in *Bush* were part of an elaborate package of legislation through which Louisiana sought to maintain public education on a segregated basis, not to end public education." 403 U.S. at 221 (emphasis added).

Moreover, the principal school closing case discussed in *Palmer* was Griffin v. County School Bd., 377 U.S. 218 (1964), an opinion by Mr. Justice Black that invalidated school closings in one Virginia district to avoid desegregation while other schools in the state remained open. In distinguishing *Griffin,* Justice Black did not even mention a special status for schools, but rather relied exclusively on other differences between that case and *Palmer,* principally the fact that *Griffin* did not involve a complete shutdown.

In a concurrence, Mr. Justice Blackmum did indicate that he saw a dif-

IV. The *Serrano* Response: An Uncertain Portent for Education and Equal Protection

Serrano's "fundamental interest" analysis of education is doubtful both logically and in terms of Supreme Court authority. Yet one cannot deny education's importance or avoid the conclusion that society must carefully scrutinize its distribution. The moral case is strong for a doctrine of equal educational opportunity that would limit differential treatment of educational entitlement. The questions that arise in adopting *Serrano* and a federal constitutional standard as the remedy for this moral need are not answered solely according to one's view of the importance of education. There remains for studied consideration the wisdom of yielding this role to the courts, and of attempting to cure societal problems with broad constitutional precepts.

The California Supreme Court, finding an inherently suspect wealth classification as well as a fundamental interest in the school financing system, required

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ference between schools and swimming pools. He stated as one of the 3 factors that influenced him in reaching the conclusion that swimming pools could be closed: "The pools are not part of the city's educational system. They are a general municipal service of the nice-to-have but not essential variety, and they are a service, perhaps a luxury, not enjoyed by many communities." 403 U.S. at 229. While this statement distinguishes schools from swimming pools, it does not distinguish education from police, fire, welfare, or other common municipal services.

Moreover, in their respective dissents in *Palmer*, both Justice Douglas and Justice Marshall rejected any special status for schools that distinguishes them from swimming pools. Justice Douglas stated: "I conclude that though a State may discontinue any of its municipal services—such as schools, parks, pools, athletic fields, and the like—it may not do so for the purpose of perpetuating or installing *apartheid* or because it finds life in a multi-racial community difficult or unpleasant." *Id.* at 239. Justice Marshall also equated schools with swimming pools or golf courses in conceding that a state could close them if it had a proper basis to do so.

that the system's inequities be justified by a compelling state interest. The court was clearly correct in finding that the system, when compared with its equal wealth alternatives, could not withstand this stricter equal protection test. The question remains, however, whether an equal wealth alternative like district power equalizing that still permits geographic disparities can itself survive a compelling interest test. For the reasons stated above concerning the pervasive societal sense that one cannot prevent people from trying to obtain a better education for their children, it is probable that district power equalizing could withstand strict scrutiny. This conclusion, however, is far from certain.[119]

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[119]The equal wealth formulation, which permits district power equalizing, is easiest understood as a constitutional attempt to equalize educational expenditures, with some inequality permitted as an accommodation to other interests. This is the equal protection formulation discussed in the text above, and used by the *Serrano, Van Dusartz* and *Rodriguez* courts.

One could argue for the equal wealth standard independently of equalization of expenditures, however. Such an argument would have to support a constitutional norm that each student, or each taxpayer, is entitled to live in a district that has an equal resource base for education. Such a norm is difficult to construct and neither the California Supreme Court nor the authors of *Private Wealth and Public Education* in their development of Proposition 1 have even attempted to state or support it. A recent article by professor Ferdinand P. Schoettle, *The Equal Protection Clause in Public Education*, 71 COLUM. L. REV. 1355, 1402-12 (1971), does make just such an argument. He states that lower tax base districts require greater taxpayer sacrifice than wealthier districts to raise educational revenue. Since the acceptability to voters of tax proposals "varies inversely with the burden," *id.* 1407, "voters in low tax base districts who seek to increase educational appropriations are forced to assume a proportionally heavier burden of electoral persuasion than those who wish to achieve an identical goal in the more affluent districts." *Id.* This electoral burden, which varies from district to district, bears no reasonable relationship to a legitimate state policy and thus denies equal protection under a Baker v. Carr, 369 U.S. 186 (1962) voting rights rationale. Professor Schoettle concedes that this approach leaves the field of education completely and would apply to all decisions of monetary issues faced by local governing bodies. He also concedes that his constitutional argument does not depend on poverty as a classification, but applies to all relative taxpayer disadvantage. He concludes that his analysis would not compel absolute equalization or elimination of local tax bases but only reduction of the gross wealth disparities to the point where they no longer affect the electoral persuasiveness

On the other hand, it is doubtful that the *Serrano* holding requires this stricter equal protection test to justify an equal wealth system like district power equalizing. *Serrano* employed the compelling interest test because it found a combination of a wealth classification and a fundamental interest.[120] District power equalizing satisfies the former test since the revenue it produces is based, not on district wealth, but on district tax effort. District power equalizing, then, would not have to meet a compelling interest test, and could be upheld on only the rational basis analysis.

This conclusion, however, points up the fundamental theoretical problem in the *Serrano* approach. Viewed from the perspective of the child and his family's interest in equal education, the current system and district power equalizing suffer the same inade-

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of adherents to the same goal among different districts.

While provocative, the Schoettle thesis is ultimately unconvincing. It has all the difficulties of the lack of a manageable judicial standard that *Serrano* and Proposition 1 rightly try to avoid. These same difficulties of measuring subtleties of differential political power are what compelled the United States Supreme Court to reject an argument similar to Professor Schoettle's in Whitcomb v. Chavis, 403 U.S. 124 (1971), concerning at-large elections, even in a racial context. Moreover, his theory would logically invalidate any number of things that affect electoral power unequally including multimember districts, single-party districts, and the seniority and committee systems in legislatures. Finally, all the electoral cases that Professor Schoettle cites involve inequalities among electors in the same political entity, that is, electors competing for statewide decisionmaking influence. Thus in *Baker v. Carr*, the constitutional vice was unequal weighing, by district, of voters in relation to their ability to influence the state legislature. Professor Schoettle's *Serrano* analysis, however, expressly eschews such a rationale as being foreclosed by James v. Valtierra, 402 U.S. 137 (1971). His rationale, rather, is that electors of a poor district have less internal district power than do those of wealthy districts. He thus posits lack of pure horizontal equality of voters in different areas, with no racial or poverty components and regardless of the issues involved, as a basis for invalidating the universal American system of local government financing. This lack of horizontal equality is said to make the system "irrational." Yet a system that provides that local resources should be available to local government to finance its needs is clearly not irrational.

[120] *See* note 22 *supra*.

quacies. Neither is a wealth classification; they are both residence classifications in their actual effects. To the extent that expenditures are related to educational quality, the child receives a poorer education whether he lives in a poor district or simply one that undervalues education.

Since the court's equal wealth standard allows for these continued educational disparities, the essential concern of *Serrano* is not the school child but the taxpayer. The California court has spawned a new, but perhaps logically inevitable corollary to Proposition 1: The *economic burden* of public education may not be a function of wealth other than the wealth of the state as a whole. As such the principle of *Serrano* cannot realistically be limited to education, but applies to all burdens of taxation.

APPENDIX "B"

AMENDED IN ASSEMBLY JUNE 22, 1972

AMENDED IN ASSEMBLY JUNE 16, 1972

AMENDED IN ASSEMBLY MAY 24, 1972

AMENDED IN ASSEMBLY MAY 3, 1972

CALIFORNIA LEGISLATURE—1972 REGULAR SESSION

ASSEMBLY BILL **No. 1283**

Introduced by the Assembly Committee on Education (Leroy F. Greene (Chairman), Chacon (Vice Chairman), Arnett, Cline, Cory, Dent, Dunlap, Fong, Bill Greene, Keysor, Lewis, Maddy, McAlister, Ryan, and Vasconcellos) and Murphy

(Assigned to Arnett)

March 15, 1972

REFERRED TO COMMITTEE ON EDUCATION

An act to amend Sections 6741, 17300, 17303.5, 17414, 17417, 17503, 17603.5, 17651, 17654.5, 17655.5, 17664, 17665, 18102.8, 18102.9, 18102.10, 18355, 18358, 18401, 20404, and 20806 of, to add Sections 13520.3, 17301, 17301.1, 17301.2, 17301.3, 17653, 17662, 17662.3, 17662.5, 18102, and 20751 to, to add Chapter 6.10 (commencing with Section 6499.230) to Division 6 of, to add Chapter 1.7 (commencing with Section 17270) to, and Article 3 (commencing with Section 17701) to Chapter 3 of, Division 14 of, to repeal Sections 1835, 5661, 6854, 6855, 6913.1, 13704, 14657, 14758, 17301, 17656, 17660, 17662, 17665.5, 18102, 18102.2, 18102.4, 18102.6, 20751, 20800, 20801.5, 20802.8, 20807, 20808, 20808.5, and 20816 of, to repeal Article 2.1 (commencing with Section 17671), Article 2.5 (commencing with Section 17680), Article 3 (commencing

with Section 17701), Article 4 (commencing with Section 17751), Article 5 (commencing with Section 17801), Article 7 (commencing with Section 17901), Article 7.1 (commencing with Section 17920), Article 7.2 (commencing with Section 17940), and Article 8 (commencing with Section 17951) of Chapter 3 of Division 14 of, to amend the heading of Article 2 (commencing with Section 17651) of Chapter 3 of Division 14 of, the Education Code, relating to the financial support of public education, making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1283, as amended, Arnett (Ed.). School finance.

Provides for revised system of allocation of state support for public elementary and high schools, such system being based upon a specified percentage of the current expense of education, as defined.

Provides for computation of maximum expenditures by such school districts.

Specifies system whereby school districts set local tax rates, but prescribed amount of proceeds thereof revert to School District Wealth Equalization Fund, for redistribution to school districts based upon district's ratio of assessed valuation to a.d.a. to statewide average ratio of assessed valuation to a.d.a.

Deletes existing provisions re computation, allocation, and apportionment of amounts denoted as "basic state aid," "equalization aid," and "supplemental support" for elementary school, high school, and community college levels.

Eliminates use of computational tax rates as a factor in computing state and local shares of foundation program support.

Eliminates unification and class size reduction bonuses in apportionment of state school funds.

Eliminates areawide school support programs for areas included in defeated unification proposals.

Revises method of computing the amount of allowances for physically handicapped, mentally retarded, and educationally handicapped pupils. Revises allowances for special

transportation programs.

Makes numerous related changes.

Vote—Majority; Appropriation—Yes; Fiscal Committee—Yes.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature in th act to provide for the financial support of publ education in the following manner:

(a) A funding mechanism which (1) minimizes th wealth disparities that presently exist between scho districts and (2) enables every child in the state receive an equal education opportunity.

(b) An adequate level of financial support for th education of every child through a combination of reasonable level of state assistance and local effort.

(c) An orderly transition from the present system to new system of school finance.

(d) A system whereby at least ~~55~~ *50* percent of th educational support is provided from the General Fun in the State Treasury.

(e) A reasonable level of annual increases from th state to meet the pressures of inflation without th necessity of annual legislative action.

(f) The continuation of local control of education programs and the level of local property tax rates.

(g) A mechanism of expenditure controls to replac the present ineffective method of property ta limitations.

(h) ~~A system for the~~ *The* elimination of most of th presently authorized school district permissive overrid taxes.

(i) A system for minimum reliance on the property ta for the support of public education.

SEC. 2. Section 1835 of the Education Code i repealed.

SEC. 3. Section 5661 of the Education Code i repealed.

SEC. 3.5. Chapter 6.10 (commencing with Sectio

6499.230) is added to Division 6 of the Education Code, to read:

CHAPTER 6.10. EDUCATIONALLY DISADVANTAGED YOUTH PROGRAMS

6499.230. It is the intent of the Legislature to provide quality educational opportunities for all children in the California public schools. The Legislature recognizes that because of differences in family income, differing language barriers, and pupil transiency, differing levels of financial aid are necessary to provide quality education for all students.

6499.231. From the funds appropriated by the Legislature for the purposes of this chapter, the Superintendent of Public Instruction, with the approval of the State Board of Education, shall administer this chapter and make apportionments to school districts to meet the total approved expense of the school districts incurred in establishing education programs for pupils who qualify economically and educationally in preschool, kindergarten, or any of grades 1 through 12, inclusive. Nothing in this chapter shall in any way preclude the use of federal funds for educationally disadvantaged youth.

6499.232. Maximum apportionments allowable to school districts shall be determined by the following factors:

(a) An index of "potential impact of bilingual-bicultural pupils" determined by dividing the percent of pupils in the district with Spanish and Oriental surnames, as determined by the annual ethnic survey conducted by the Department of Education, by the statewide average percentage of such pupils for unified, elementary, or secondary districts, as appropriate.

(b) A ratio of the district's "index of family poverty," defined as the district's Elementary and Secondary Education Act, Title I entitlement, divided by its average daily attendance in grades 1 through 12, or any thereof maintained, divided in turn by the state average index of family poverty for unified, elementary, or secondary

districts, as appropriate.

(c) A ratio of the district's "index of pupil transiency," as computed from the relationship between the district's average daily attendance and its total annual enrollment, divided by the state average index of pupil transiency for unified, elementary, or secondary districts, as appropriate.

The district's total maximum apportionment under this chapter shall be determined by computing the product of (1) one-third the sum of the above three factors, (2) the number of pupils receiving aid for dependent children support, and (3) a constant amount of three hundred dollars ($300), or such amount as the Superintendent of Public Instruction may determine so that the sum of all allocations will not exceed the funds appropriated by the Legislature for the purposes of this chapter.

6499.233. For the fiscal year 1972–1973, the superintendent shall allocate to local districts an amount equal to not less than 40 percent of the total amount computed under Section 6499.232. For the fiscal year 1973–1974, the superintendent shall allocate not less than 40 percent of the total amount so computed and not more than 90 percent of the amount computed. For the 1974–1975 fiscal year and thereafter, the superintendent shall allocate to each district not less than 40 percent nor more than 100 percent of the amount so computed.

6499.234. In approving programs under this chapter, the State Board of Education shall give due consideration to the effectiveness of the program and shall not continue in operation any program that, upon evaluation, has been shown to be of low effectiveness and which has only limited possibility of improved effectiveness.

For the fiscal year 1973–1974 and for each year thereafter, districts which demonstrate a high degree of program effectiveness shall receive amounts up to their entitlement limits. Districts which demonstrate low levels of program effectiveness shall continue to receive their initial apportionments but the Superintendent of Public Instruction may reduce the additional computed apportionments due such districts, if he determines that

such programs have limited possibilities of improved achievement.

6499.235. The Superintendent of Public Instruction shall apportion the funds available for programs in accord with procedures specified in this chapter and policies which may be adopted by the State Board of Education. Funds shall be allocated to each district within its entitlement based upon a plan submitted by the district to the Superintendent of Public Instruction, and approved by the State Board of Education. The plan shall include (1) an explicit statement of what the district seeks to accomplish, (2) a description of the program and activities designed to achieve these purposes, and (3) a planned program of annual evaluation, including a statement of the criteria to be used to measure the effectiveness of the program.

6499.236. The State Board of Education shall adopt regulations setting forth the standards and criteria to be used in the administration, monitoring, evaluation, and dissemination of programs submitted for consideration under this chapter; 1 percent of the total appropriation for the purposes of this chapter shall be retained by the Department of Education for these purposes. Funds appropriated for the purposes of this chapter not allocated as previously specified shall be allocated by the State Board of Education to promote the intent of this chapter to provide education programs to as many eligible pupils as possible and to stimulate the development, implementation, and evaluation of innovative programs.

6499.237. The Superintendent of Public Instruction shall submit annually to the Governor and to each house of the Legislature a report evaluating the programs established pursuant to this chapter, together with his recommendations concerning whether the same should be continued in operation.

6499.238. There is hereby appropriated from the General Fund in the State Treasury to the State School Fund for the fiscal year 1972–1973 an amount equal to twenty-one dollars and fifty cents ($21.50) multiplied by

the total statewide average daily attendance of the preceding fiscal year in kindergarten and grades 1 to 12, inclusive, to be used for the purposes of Chapter 6.10 (commencing with Section 6499.230) of Division 6 of the Education Code. For the fiscal year 1973–1974 the amount per such unit of average daily attendance shall be forty-three dollars ($43); and for the fiscal year 1974–1975 and thereafter, it shall be fifty-three dollars and seventy-five cents ($53.75).

SEC. 4. Section 6741 of the Education Code is amended to read:

6741. A student shall be deemed to be a resident of the high school district in which he lived at the time of his admission to the program and the excess cost for a school year of educating such student shall be paid by the high school district of which he is a resident to the county superintendent who is providing education for the students. The excess cost shall be determined by dividing the total current expense of education as defined in *subdivision (b) of* Section 17503 and also excluding expense of boarding and lodging during such school year by the total number of units of average daily attendance in such school or classes during such school year, less state and federal apportionments on account of such average daily attendance.

Average daily attendance of students shall be computed, for purposes of this article, by dividing the number of days such student attended the schools or classes by the number of days that the schools or classes were taught, except that with respect to a student attending such schools or classes for more than 175 days in a school year, the average daily attendance shall be computed by using the divisor of 175.

For purposes of computing average daily attendance 180 minutes of class attendance shall be deemed to constitute a schoolday, and no more than 15 hours of class time per week shall be considered.

Not later than July 15th of each year, the superintendent of schools of the county providing education for students shall forward his claim for the

excess expense reimbursement to the high school district of residence of each student during the preceding school year, and the governing board of such high school district shall upon receipt thereof pay such claims.

SEC. 5. Section 6854 of the Education Code is repealed.

SEC. 6. Section 6855 of the Education Code is repealed.

SEC. 7. Section 6913.1 of the Education Code is repealed.

SEC. 8. Section 13520.3 is added to the Education Code, to read:

13520.3. When a school district operates on a year-around schedule pursuant to Chapter 7 (commencing with Section 32100) of Division 22, the salaries of employees who are employed for the extended school year may be adjusted in accordance with the ratio of the extension of the school year in months bears to the length of the school year in months prior to the commencement of year-around operation. No classroom teacher may be required to participate in a year-around program without his consent.

SEC. 9. Section 13704 of the Education Code is repealed.

SEC. 10. Section 14657 of the Education Code is repealed.

SEC. 11. Section 14758 of the Education Code is repealed.

SEC. 12. Chapter 1.7 (commencing with Section 17270) is added to Division 14 of the Education Code, to read:

CHAPTER 1.7. ADJUSTMENTS TO USABLE ASSESSED VALUATION

17270. The Legislature hereby declares that its intent in enacting this chapter is to provide a reasonable and equitable method for ascertaining the value of property located within school districts for use in connection with the administration of state laws providing for the

allocation of state funds to such districts for school purposes on the basis of value and provide for more equal educational opportunity for students residing in districts of varying wealth per unit of average daily attendance and to improve the equity among taxpayers residing in or owning property in districts of varying wealth.

The Legislature hereby further declares that in enacting this chapter it has no intention to affect in any way, whether directly or indirectly, any determination of the assessed value of property for tax purposes.

17271. Each school district shall report to the Superintendent of Public Instruction:

(a) The total assessed valuation of the district; and

(b) The amount equal to:

(1) Ten percent of the total assessed valuation in the 1972–1973 fiscal year.

(2) Twenty percent of the total assessed valuation in the 1973–1974 fiscal year.

(3) Thirty percent of the total assessed valuation in the 1974–1975 fiscal year.

(4) Forty percent of the total assessed valuation in the 1975–1976 fiscal year.

(5) Fifty percent of the total assessed valuation in the 1976–1977 fiscal year and following.

17272. The Superintendent of Public Instruction shall compute the total amounts reported to him pursuant to subdivision (b) of Section 17271 for each type of district. He shall make a separate computation for elementary school districts, high school districts, and unified school districts. He shall divide the total for each type of district by the statewide average daily attendance for the preceding fiscal year for each type of district. The amount computed pursuant to this section is the assessed valuation redistribution amount per unit of average daily attendance for each type of district.

17273. The Superintendent of Public Instruction shall compute for each school district the amount derived by multiplying the assessed valuation redistribution amount per unit of average daily attendance by the average daily attendance of the district for the preceding fiscal year.

The amount computed pursuant to this section is the redistribution amount.

17273.5. The "district assessed valuation" for each district is the total assessed valuation minus the amount reported for it pursuant to subdivision (b) of Section 17271 plus the redistribution amount for the type of district computed pursuant to Section 17273.

17274. (a) Each school district shall compute the amount which the revenue derived from the levy and collection of school district taxes would have been if it had been collected and been based upon an adjusted assessed valuation computed pursuant to Section 17273.5

For the purpose of this ~~subdivision~~ *chapter*, the school district tax shall not include any tax levied and collected pursuant to Sections 15517, 15518, 16633, 16635, 16645.9, 19443, 19572, 19619, 19687, 19695, or 22101.

(b) Each district shall compute the total amount of revenue derived from the levy of school district taxes on property lying within the district.

(c) If the amount computed pursuant to subdivision (a) is less than the amount computed pursuant to subdivision (b), the difference shall be transmitted to the School District Wealth Equalization Fund.

(d) If the amount computed pursuant to subdivision (a) is more than the amount computed pursuant to subdivision (b), the Superintendent of Public Instruction shall allow to the district an amount equal to such difference from the School District Wealth Equalization Fund.

SEC. 13. Section 17300 of the Education Code is amended to read:

17300. It is the intent of the Legislature that the administration of the laws governing the financial support of the public school system in this state be conducted within the purview of the following principles and policies:

The system of public school support should be designed to strengthen and encourage local responsibility for control of public education. Local school districts should be so organized that they can facilitate the provision of

full educational opportunities for all who attend the public schools. Local control is best accomplished by the development of strong, vigorous, and properly organized local school administrative units. It is the state's responsibility to create or facilitate the creation of local school districts of sufficient size to properly discharge local responsibilities and to spend the tax dollar effectively.

Effective local control requires that all local administrative units contribute to the support of school budgets in proportion to their respective abilities, and that all have such flexibility in their taxing programs as will readily permit of progress in the improvement of the educational program. Effective local control requires a local taxing power, and a local tax base which is not unduly restricted or overburdened.

The system of public school support should assure that state, local, and other funds are adequate for the support of a realistic educational program. It is unrealistic and unfair to the less wealthy districts to provide for only a part of the financing necessary for an adequate educational program.

The system of public school support should permit and encourage local school districts to provide and support improved district organization and educational programs. The system of public school support should prohibit the introduction of undesirable organization and educational practices, and should discourage any such practices now in effect. Improvement of programs in particular districts is in the interests of the state as a whole as well as of the people in individual districts, since the excellence of the programs in some districts will tend to bring about program improvement in other districts.

The system of public school support should make provision for the apportionment of state funds to local school districts on a strictly objective basis that can be computed as well by the local districts as by the state. The principle of local responsibility requires that the granting of discretionary powers to state officials over the distribution of state aid and the granting to these officials

of the power to impose undue restriction on the use of funds and the conduct of educational programs at the local level be avoided.

The system of public school support should effect a partnership between the state, the county, and the local district, with each participating equitably in accordance with its relative ability. The respective abilities should be combined to provide a financial plan between the state and the local agencies for public school support. Toward this support program, each county and district, through a uniform method should contribute in accordance with its true financial ability.

The system of public school support should provide for essential educational opportunities for all who attend the public schools. Provision should be made for adequate financing of all educational services.

The broader based taxing power of the state should be utilized to raise the level of financial support in the properly organized but financially weak districts of the state, thus contributing greatly to the equalization of educational opportunity for the students residing therein. It should also be used to provide a minimum amount of guaranteed support to all districts, for such state assistance serves to develop among all districts a sense of responsibility to the entire system of public education in the state. State assistance to all districts also would create a tax leeway for the exercise of local initiative.

The Legislature further declares that in order to reduce the burden of inequitable property taxation it is in the best interest of the state to provide, from other than ad valorem property taxes, a predominate portion of the statewide cost of education in the elementary and secondary schools of the state. The Legislature further declares that the funds to be provided are required in order to reduce the disproportionate demand upon property taxpayers for support of educational services and programs, equalize wide variations in the ability of local communities to support such services and programs, and to assist school districts in meeting increased

demands due to concentrations of educationally disadvantaged pupils.

In recognition of these disparities it is the intent of the Legislature to apportion funds for school purposes in such a manner as to provide adequate educational programs for all students regardless of where they reside or the wealth of their parents and neighbors.

In implementing its intent the Legislature declares that, although the present system of funding does not meet desirable criteria, sudden changes of great magnitude in the system of public school finance would disrupt the educational system of many districts and thereby damage the whole public school system of the state, the educational welfare of all students, and the economy of the state; therefore, rapid change is undesirable and unacceptable.

Accordingly, the Legislature declares its intent to improve with all reasonable and deliberate speed, financial support of education in districts which have less than the statewide average assessed valuation per unit of average daily attendance as rapidly as those districts can efficiently utilize additional support, and at the same time allow districts with more than the statewide assessed valuation per unit of average daily attendance sufficient time to readjust their programs to new methods of financing to avoid precipitous disruption of present programs.

It is further the intent of the Legislature to study the possibility of adopting an apportionment system based upon weighted units of average daily attendance.

SEC. 14. Section 17301 of the Education Code is repealed.

SEC. 15. Section 17301 is added to the Education Code, to read:

17301. The State Controller shall during each fiscal year transfer from the General Fund of the state to the State School Fund such sums as are necessary for the state to provide a specified percentage of the current expense of education, as defined by subdivision ~~(b)~~ *(c)* of Section 17503, for each pupil in average daily attendance during

the preceding fiscal year credited to all kindergarten, elementary and high schools in the state and to the county school tuition funds, as certified by the Superintendent of Public Instruction. For the 1972–1973 and 1973–1974 fiscal years the percentage shall be 45 percent, and for the 1974–1975 fiscal year, and each fiscal year thereafter, the percentage shall be 50 percent. ~~The~~ *In the 1972–1973 fiscal year and each fiscal year thereafter, the* amounts so transferred shall be increased by an amount which shall reflect the application of an adjustment index developed cooperatively by the Superintendent of Public Instruction, the Legislative Analyst, and the Director of Finance. This adjustment index shall reflect the expected change in the cost of a basic educational program, plus any additional costs mandated by the Legislature, for the fiscal year under consideration. The Controller shall adjust such transfers to reflect increases or decreases as estimated by the Superintendent of Public Instruction for the current year in the statewide units of average daily attendance in the kindergartens, elementary, and high schools of the state.

The Controller shall also transfer two hundred ninety-eight dollars and thirty-eight cents ($298.38) from the General Fund to the State School Fund per pupil in average daily attendance credited to the community colleges of the state during the preceding fiscal year.

SEC. 16. Section 17301.1 is added to the Education Code, to read:

17301.1. The State Controller shall also transfer an amount equal to the percentage specified in Section 17301 for any new or expanded program ~~authorized or~~ required by law which was not ~~authorized or~~ required in the preceding fiscal year.

SEC. 17. Section 17301.2 is added to the Education Code, to read:

17301.2. The State Controller shall also transfer an amount from the General Fund to the School Disrict Wealth Equalization Fund equal to any deficit created in that fund.

SEC. 17.5. Section 17301.3 is added to the Education

Code, to read:

17301.3. The State Controller shall also transfer an amount from the General Fund to the State School Fund equal to thirty-eight dollars ($38) multiplied by the average daily attendance credited to all kindergarten, elementary, high school, community college, and adult schools and to county school tuition funds during the preceding fiscal year *for expenditure pursuant to Section 17303.5*.

SEC. 18. Section 17303.5 of the Education Code is amended to read:

17303.5. The amount transferred pursuant to Sections 17301 and 17301.3 shall be expended, in part, in accordance with the following schedule:

(a) Twenty-one dollars and fifty cents ($21.50) multiplied by the total average daily attendance credited during the preceding school year to elementary school districts which during the preceding school year had less than 901 units of average daily attendance, to high school districts which during the preceding school year had less than 301 units of average daily attendance, and to unified districts which during the preceding school year had less than 1,501 units of average daily attendance, but not to exceed an amount equal to seventy cents ($0.70) multiplied by the average daily attendance credited during the preceding fiscal year to all kindergarten, elementary, high school, community college and adult schools in the state and to county school tuition funds, for allowance to county school service funds pursuant to subdivision (a) of Section 18352.

(b) Four dollars and forty cents ($4.40) multiplied by the total average daily attendance credited to all kindergarten, elementary, high school, community college and adult schools in the state and to county school tuition funds during the preceding school year for the purposes of Article 10 (commencing with Section 18051) of Chapter 3 of this division.

(c) Nineteen dollars and fifty-two cents ($19.52) multiplied by the total average daily attendance credited to all kindergarten, elementary, high school, community

college and adult schools in the state and to county school tuition funds during the preceding school year, for the purposes of Sections 18060 and 18062, and Article 11 (commencing with Section 18101) of Chapter 3 of this division.

(d) Three dollars and six cents ($3.06) multiplied by the total average daily attendance credited to all kindergarten, elementary, high school, community college and adult schools in the state and to county school tuition funds during the preceding school year for allowances to county school service funds pursuant to subdivision (b) of Section 18352.

(e) One dollar and sixty-seven cents ($1.67) multiplied by the average daily attendance during the preceding fiscal year credited to all kindergarten, elementary, high school, community college and adult schools in the state and to county school tuition funds for allowances to school districts for the purposes of Section 6426.

(f) Eight dollars and sixty-five cents ($8.65) multiplied by the average daily attendance during the preceding school year credited to all kindergarten, elementary, high school, community college and adult schools in the state and to county school tuition funds for purposes of Chapter 7.1 (commencing with Section 6750) of Division 6.

SEC. 19. Section 17414 of the Education Code is amended to read:

17414. If during any fiscal year there is apportioned to a school district or to any fund from the State School Fund at least one hundred dollars ($100) more or at least one hundred dollars ($100) less than the amount to which the district or fund was entitled, the Superintendent of Public Instruction, in accordance with regulations that he is herewith authorized to adopt not later than the third succeeding fiscal year shall withhold from, or add to, the apportionment made during such fiscal year, the amount of such excess or deficiency, as the case may be. Notwithstanding, any other provision of this code to the contrary, excesses withheld or deficiencies added by the

Superintendent of Public Instruction under this section shall be added to or allowed from any portion of the State School Fund.

SEC. 20. Section 17417 of the Education Code is amended to read:

17417. Wherever the attendance of pupils is not included in the computation of the average daily attendance of a school district for any fiscal year because the certification document of the person employed by the district to instruct such pupils was not in force during the period of such attendance, the governing board of the district may, upon payment of the salary of such person pursuant to Section 13515, or similar provisions of law, report such attendance to the Superintendent of Public Instruction during the fiscal year in which such salary is paid. Such report shall be made in such form as shall be prescribed and furnished by the Superintendent of Public Instruction. Thereafter the Superintendent of Public Instruction shall add to the apportionment from the State School Fund to the district during the next succeeding fiscal year or years, as determined by him but not exceeding three, the additional amount to which the district would have been entitled in the fiscal year next succeeding that in which such attendance was not included in the computation of the average daily attendance of the district if such amount is at least one hundred dollars ($100) or more.

Any such additional amount shall be apportioned from the State School Fund before any other apportionment from such fund is made and shall be allowed from any portion of such fund.

SEC. 21. Section 17503 of the Education Code is amended to read:

17503. For purposes of this section:

(a) "Salaries of classroom teachers" and "teacher" shall have the same meanings as prescribed by Section 17200 of this code provided, however, that the cost of all health and welfare benefits provided to the teachers by the school district shall be included within the meaning of salaries of classroom teachers.

(b) "Current expense of education" means the gross total expended (not reduced by estimated income or estimated federal and state apportionments) for the purposes classified in the final budget of a school district (except one which, during the preceding fiscal year, had less than 101 units of average daily attendance) submitted to and approved by the county superintendent of schools pursuant to Section 20607 of this code for administration, instruction (including salaries and other expense), health services, operation of plant, maintenance of plant, and fixed charges. "Current expense of education" shall not include those purposes classified as transportation of pupils, food service, community service, capital outlay, state school building loan repayment; and shall not include the amount expended pursuant to any lease agreement for plant and equipment or the amount expended from funds received from the federal government pursuant to the "Economic Opportunity Act of 1964" or any extension of such act of Congress.

(c) For the purposes of Sections 17301, 17654.5, 17655.5, 17662, 17664, 17665, and Article 3 (commencing with Section 17701) of this chapter, the current expense of education shall include only state funds apportioned as basic aid, equalizaton aid, supplemental support and additional equalization aid; local funds derived pursuant to subdivision (a) of Section 17274; miscellaneous funds, as defined in Section 17606; and any federal funds allocated as general aid, such as funds allocated pursuant to Public Law 81-874.

For 1973–1974 and each fiscal year thereafter, state basic aid, equalization aid, supplemental support, and additional equalization aid shall mean state funds allocated pursuant to Sections 17654.5, 17655.5, 17662, 17664, and 17665.

The statewide average current expense of education per unit of average daily attendance shall mean the sum of the funds specified by this subdivision received by all districts in the state of the particular type (elementary, high school, or unified) divided by the ~~foundation~~

~~program~~ average daily attendance reported by those same districts.

There shall be expended during each fiscal year for payment of salaries of classroom teachers:

(a) By an elementary school district, sixty percent (60%) of the district's current expense of education.

(b) By a high school district, fifty percent (50%) of the district's current expense of education.

(c) By a community college district, fifty percent (50%) of the district's current expense of education.

(d) By a unified school district, fifty-five percent (55%) of the district's current expense of education.

If the Superintendent of Public Instruction determines that a school district has not expended the applicable percentage of current expense of education for the payment of salaries of classroom teachers during the preceding fiscal year, he shall, in apportionments made to the school district from the State School Fund after April 15 of the current fiscal year, designate an amount of such apportionment or apportionments equal to the apparent deficiency in district expenditures. Any amount so designated by the Superintendent of Public Instruction shall be deposited in the county treasury to the credit of the school district, but shall be unavailable for expenditure by the district pending the determination to be made by the Superintendent of Public Instruction on any application for exemption which may be submitted to the Superintendent of Public Instruction. In the event it appears to the governing board of a school district that the application of the preceding paragraphs of this section during a fiscal year results in serious hardship to the district, or in the payment of salaries of classroom teachers in excess of the salaries of classroom teachers paid by other districts of comparable type and functioning under comparable conditions, the board may, with the written approval of the county superintendent of schools having jurisdiction over the district apply to the Superintendent of Public Instruction in writing not later than September 15th of the succeeding fiscal year for exemption from the

requirements of the preceding paragraphs of this section for the fiscal year on account of which the application is made. Upon receipt of such application, duly approved, the Superintendent of Public Instruction shall grant the district exemption for any amount that is less than one thousand dollars ($1,000), and if the amount is one thousand dollars ($1,000), or greater may grant the district exemption, to the extent deemed necessary by him, from such requirements for the fiscal year on account of which the application is made. If such exemption is granted the designated moneys shall be immediately available for expenditure by the school district governing board. If no application for exemption is made or exemption is denied, the Superintendent of Public Instruction shall order the designated amount or amount not exempted to be added to the amounts to be expended for salaries of classroom teachers during the next fiscal year.

The Superintendent of Public Instruction shall enforce the requirements prescribed by this section, and may adopt necessary rules and regulations to that end. He may require the submission to him, during the school year, by school district governing boards and county superintendents of schools, of such reports and information as may be necessary to carry out the provisions of this section.

Any reference in this code to "current expense of education as defined in Section 17503" enacted prior to the enactment of Chapter 1.7 (commencing with Section 17270) of this division shall mean current expense of education as defined in subdivision (b) of Section 17503.

SEC. 22. Section 17603.5 of the Education Code is amended to read:

17603.5. The amounts computed as allowable to any ~~school~~ *community college* district for state aid shall be reduced by fifty percent (50%) of miscellaneous funds, as defined in Section 17606. In no event shall the reduction exceed the total amount allowable as state aid to the school district ~~for the fiscal year. For such purposes, miscellaneous funds, as defined in Section 17606, received~~

~~by a unified school district, shall be allocated to the kindergarten and elementary, high school and community college grades, respectively, on the basis of the proportion of the district's total average daily attendance in each such grade level, and the provisions of Section 17601 shall be applicable.~~ *for the fiscal year.*

Should the amount of miscellaneous funds, as defined in Section 17606, actually received by a ~~school~~ *community college* district for any fiscal year be more or less than that reported to the Superintendent of Public Instruction, the Superintendent of Public Instruction shall during the fiscal year next succeeding withhold from or add to the apportionment made to the district from the State School Fund the amount of the excess or deficiency in the apportionment of state aid from the State School Fund for the preceding year, if the amount of the excess or deficiency in such apportionment was one hundred dollars ($100) or more.

SEC. 23. The heading of Article 2 (commencing with Section 17651) of Chapter 3 of Division 14 of the Education Code is amended to read:

Article 2. Computation of Foundation Programs and School Support for School Districts

SEC. 24. Section 17651 of the Education Code is amended to read:

17651. The Superintendent of Public Instruction shall compute for each school district the amount of school support therefor, in the manner prescribed by this article.

SEC. 25. Section 17653 is added to the Education Code, to read:

17653. No aid in excess of one hundred twenty dollars ($120) per unit of average daily attendance shall be allowed unless there shall have been levied pursuant to this code, for a district during the fiscal year, a tax, exclusive of taxes levied under Sections 1822.2, 1825, 16633, 16635, 16645.9, 19443, 19619, 20801, and 22101, of not less than one dollar ($1) if an elementary district, eighty

cents ($0.80) if a high school district, *one dollar and eighty cents ($1.80) if a unified school district,* and twenty-five cents ($0.25) if a community college district.

SEC. 26. Section 17654.5 of the Education Code is amended to read:

17654.5. For each elementary school district which maintains only one school with an average daily attendance of less than 101, he shall make one of the following computations, whichever provides the lesser amount:

(1) For each small school which has an average daily attendance during the fiscal year of less than 26, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school at least one teacher was hired full time, he shall compute for the the product of 25 multiplied by the appropriate percentage specified in Section 17301 multiplied by the relative support factor specified in Section 17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503.

(2) For each small school which has an average daily attendance during the fiscal year of 26 or more and less than 51, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school at least two teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district the product of 50 multiplied by the appropriate percentage specified in Section 17301 multiplied by the relative support factor specified in Section 17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503.

(3) For each small school which has an average daily attendance during the fiscal year of 51 or more but less than 76, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school three teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district the product of 75 multiplied by

the relative support percentage specified in Section 17301 multiplied by the appropriate factor specified in Section 17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503.

(4) For each small school which has an average daily attendance during the fiscal year of 76 or more and less than 101, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school four teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district the product of 100 multiplied by the appropriate percentage specified in Section 17301 multiplied by the ~~appropriate~~ *relative support* factor specified in Section ~~17662~~ *17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503*.

SEC. 27. Section 17655.5 of the Education Code is amended to read:

17655.5. (a) For each district on account of each necessary small school (giving regard to the number of teachers actually employed or average daily attendance), he shall make one of the following computations, whichever provides the lesser amount:

(1) For each necessary small school which has an average daily attendance during the fiscal year of less than 26, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school at least one teacher was hired full time, he shall compute for the district the product of 25 multiplied by the appropriate percentage specified in Section 17301 multiplied by the ~~appropriate~~ *relative support* factor specified in Section ~~17662~~ *17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503*.

(2) For each necessary small school which has an average daily attendance during the fiscal year of 26 or more and less than 51, exclusive of pupils attending the

seventh and eighth grades of a junior high school, and for which school at least two teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district the product of 50 multiplied by the appropriate percentage specified in Section 17301 multiplied by the ~~appropriate~~ *relative support* factor specified in Section ~~17662~~ *17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503*.

(3) For each necessary small school which has an average daily attendance during the fiscal year of 51 or more but less than 76, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school three teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district the product of 75 multiplied by the appropriate percentage specified in Section 17301 multiplied by the ~~appropriate~~ *relative support* factor specified in Section ~~17662~~ *17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503*.

(4) For each necessary small school which has an average daily attendance during the fiscal year of 76 or more and less than 101, exclusive of pupils attending the seventh and eighth grades of a junior high school, and for which school four teachers were hired full time for more than one-half of the days schools were maintained, he shall compute for the district the product of 100 multiplied by the appropriate percentage specified in Section 17301 multiplied by the ~~appropriate~~ *relative support* factor specified in Section ~~17662~~ *17662.5 multiplied by the statewide average current expense of education for elementary districts as determined pursuant to subdivision (c) of Section 17503*.

(b) For each elementary district which exclusive of pupils attending the seventh and eighth grades of a junior high school has an average daily attendance of 101 or more during the fiscal year, he shall compute the

allowance in accordance with subdivision (b) of Section 17662, plus any amount pursuant to Sections 17654.5 and 17655.5.

SEC. 28. Section 17656 of the Education Code is repealed.

SEC. 29. Section 17660 of the Education Code is repealed.

SEC. 30. Section 17662 of the Education Code is repealed.

SEC. 31. Section 17662 is added to the Education Code, to read:

17662. (a) The Superintendent of Public Instruction shall allow to each school district on account of the average daily attendance credited to the district in the appropriate grade levels an amount computed in accordance with subdivision (b) of this section plus any amount pursuant to the provisions of Sections 17654.5, 17655.5, and 17664.

No apportionment may be less than one hundred twenty dollars ($120) per unit of average daily attendance.

(b) The apportionment to a school district ~~equals~~ *shall be* the product of *(1)* the number of units of average daily attendance of the district ~~and~~, *(2)* the appropriate percentage specified in Section 17301 ~~and~~, *(3)* the statewide average current expense of education for the type of district (elementary, high school, or unified) as defined in subdivision (c) of Section 17503 and *(4)* the relative support factor of the district, as determined pursuant to Section 17662.5.

SEC. 32. Section 17662.3 is added to the Education Code, to read:

17662.3. The relative wealth index of a school district is the quotient of the assessed valuation per unit of average daily attendance of the district, as adjusted pursuant to Chapter 1.7 of Division 14 (commencing with Section 17270), divided by the statewide assessed valuation per unit of average daily attendance for the particular type of school district.

SEC. 33. Section 17662.5 is added to the Education

Code, to read:

17662.5. The relative support factor of a school district is computed in the following manner:

(a) For districts with a relative wealth index of 0.5 or less, the relative support factor is 0.991 plus one-half multiplied by the quantity 1.5 minus twice the relative wealth index.

(b) For districts with a relative wealth index greater than 0.5 but equal to or less than 1.5, the relative support factor is 0.991 plus one-half multiplied by the quantity one minus the relative wealth index.

(c) For districts with a relative wealth index greater than 1.5, the relative support factor is the reciprocal of 0.9 divided by the relative wealth index.

SEC. 34. Section 17664 of the Education Code is amended to read:

17664. For each district on account of each necessary small high school the Superintendent of Public Instruction shall make one of the following computations selected with regard only to the number of certificated employees employed or average daily attendance, whichever provides the lesser amount:

Average daily attendance	Minimum number of certificated employees	Amount to be allowed
1- 20	3	$8,500
21- 40	4	16,980
41- 60	5	25,470
61- 75	6	31,830
76- 90	7	38,190
91-105	8	44,560
106-120	9	50,920
121-135	10	52,280
136-150	11	63,650
151-180	12	76,370
181-220	13	93,340
221-260	14	110,310
261-300	15	127,300

For each district which has an average daily attendance of less than 21 and for which fewer than three certificated employees were employed, he shall _____ ($_____) allow four thousand dollars ($4,000) for each of the teachers employed in the school.

For the purposes of this section a "certificated employee" is an equivalent full-time position of an individual holding a credential authorizing service, and performing service in grades 9 through 12 in any secondary school. Any fraction of an equivalent full-time position shall be deemed to be a full-time position.

The allowance established by this section for high schools with an average daily attendance of less than 301 shall not apply to any high school established after July 1, 1961 unless the establishment of such schools has been approved by the Superintendent of Public Instruction.

SEC. 35. Section 17665 of the Education Code is amended to read:

17665. For each high school district which has an average daily attendance of 301 or more during the fiscal year, he shall compute the allowance in accordance with subdivision (b) of Section 17662 plus any amount pursuant to Section 17664.

SEC. 36. Section 17665.5 of the Education Code is repealed.

SEC. 37. Article 2.1 (commencing with Section 17671) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 38. Article 2.5 (commencing with Section 17680) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 39. Article 3 (commencing with Section 17701) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 40. Article 3 (commencing with Section 17701) is added to Chapter 3 of Division 14 of the Education Code, to read:

Article 3. Adjustments to Expenditures

17701. ~~In~~ *Adjustments to expenditures pursuant to this article shall commence in the 1972–1973 fiscal year as adjustments to the 1971–1972 current expense of education as defined in subdivision (c) of Section 17503. In the 1973–1974 fiscal year, and each fiscal year thereafter, similar adjustments to expenditures shall be made annually.*

In computing the transfer to the State School Fund pursuant to Section 17301 and the apportionments to districts pursuant to Section 17662, the Superintendent of Public Instruction shall annually adjust the amounts by a factor which is a function of the adjustment in the adjustment index developed pursuant to Section 17301 as prescribed by this article.

For the purposes of this article, reference to expenditures per unit of average daily attendance shall have the same meaning as "current expense of education" as used in subdivision ~~(b)~~ *(c)* of Section 17503.

17702. For the purposes of this article the following definitions shall apply:

(a) "Relative expenditure index" is the quotient of the district's expenditure per unit of average daily attendance divided by the statewide average current expense of education per unit of average daily attendance for the particular type of district (elementary, high school, or unified).

(b) "Relative salary index" is the quotient of the district's average salary for certificated or classified employees by the statewide average salary for certificated or classified employees.

Separate computations are to be made for each category of employees.

(c) The "reasonable expenditure increment factor" for a district which has a relative expenditure index greater than one is the quotient of the change in the adjustment index developed pursuant to Section 17301 divided by the square of the relative expenditure index.

The "reasonable expenditure increment factor" for a

district which has a relative expenditure index equal to or less than one is the product of the adjustment index developed pursuant to Section 17301 multiplied by the quantity three minus twice the relative expenditure index.

17703. Annual salary increases for the employees of a district which has relative salary index greater than one may not exceed the amount determined by the application of a factor which is the quotient of a salary index developed by the Superintendent of Public Instruction, the Legislative Analyst, and the Department of Finance divided by the square of the relative salary index.

17704. Annual salary increases for the employees of a district which has a relative salary index equal to or less than one may not exceed the amount determined by the application of a factor which is the product of the index developed by the Superintendent of Public Instruction, the Legislative Analyst, and the Department of Finance multiplied by the quantity three minus twice the relative salary index.

17705. With respect to increases in salaries of certificated employees the Superintendent of Public Instruction shall disregard any increases granted on account of additional academic training or promotion to a different job category.

17706. The expenditures per unit of average daily attendance in any school district may not increase by a factor greater than the reasonable expenditure increment factor unless such expenditures have been approved by the electorate pursuant to Section 20803. In the event a district exceeds such expenditure guidelines the Superintendent of Public Instruction shall disregard such excess expenditures when computing the average current expense of education pursuant to subdivision (c) of Section 17503.

17707. In the event a district exceeds the increases authorized by Sections 17703, 17704, and 17705 regarding salary increases the Superintendent of Public Instruction shall withhold from apportionments any amount in

excess of such computations. When computing the statewide average current expense of education *pursuant to subdivision (c) of Section 17503* he shall also omit any amounts attributable to excessive increases in salaries.

17708. Apportionments from the State School Fund shall be adjusted to reflect the application of the reasonable expenditure index to the apportionment for each school district.

SEC. 41. Article 4 (commencing with Section 17751) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 42. Article 5 (commencing with Section 17801) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 43. Article 7 (commencing with Section 17901) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 44. Article 7.1 (commencing with Section 17920 of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 44.5. Article 7.2 (commencing with Section 17940) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 45. Article 8 (commencing with Section 17951) of Chapter 3 of Division 14 of the Education Code is repealed.

SEC. 46. Section 18102 of the Education Code is repealed.

SEC. 47. Section 18102 is added to the Education Code, to read:

18102. The Superintendent of Public Instruction shall allow to each school district and county superintendent of schools for each particular category of minors in a special education program during the current fiscal year an amount computed as follows:

(a) He shall divide the average daily attendance in each particular category of minors in a special education program by the maximum class size established by law for special day classes for each particular category of minor in a special education program, and increasing the

quotient to the next highest integer where a fractional amount is produced.

(b) He shall then determine for each particular category the product of the amount computed under subdivision (a) multiplied by the maximum class size established by law for special day classes for the particular category.

(c) He shall then multiply the amount computed under subdivision (b) by the following amount for the particular grade level and category:

Category	Elementary school grades (K–8)	High school grades (9–12)
Physically handicapped		
Class-size maximum of 3	$5,400	—
Class-size maximum of 5	—	$2,965
Class-size maximum of 6	2,520	—
Class-size maximum of 8	1,800	1,670
Class-size maximum of 10	1,370	1,240
Class-size maximum of 12	1,080	950
Class-size maximum of 16	—	590
Class-size maximum of 20	—	375
Mentally retarded (as defined in Section 6902)		
Class-size maximum of 15	570	440
Class-size maximum of 18	420	285
Mentally retarded (as defined in Section 6903)	920	785
Educationally handicapped	1,000	870

SEC. 48. Section 18102.2 of the Education Code is repealed.

SEC. 49. Section 18102.4 of the Education Code is repealed.

SEC. 50. Section 18102.6 of the Education Code is repealed.

SEC. 51. Section 18102.8 of the Education Code is amended to read:

18102.8. The governing board of a school district with an average daily attendance of less than 2,000 pupils

during the current fiscal year, or a county superintendent of schools, may apply to the Superintendent of Public Instruction whenever sparsity of population or transportation distances make it impossible to maintain classes of the maximum size as prescribed by this code or by the State Board of Education. If the Superintendent of Public Instruction, upon review, finds that it is impossible to maintain classes of the maximum size as prescribed by this code or by the State Board of Education, he may add to the amounts allowed under Section 18102 an amount sufficient to provide for the needed classes, but not more per special class than the applicable amounts computed in that section.

SEC. 52. Section 18102.9 of the Education Code is amended to read:

18102.9. (1) In addition to the allowances provided under Section 18102, the Superintendent of Public Instruction shall allow to school districts and county superintendents of schools for each unit of average daily attendance for an amount as follows:

(a) For instruction of educationally handicapped minors in learning disability groups, ~~two thousand four hundred eighty dollars ($2,480)~~ *one thousand eight hundred eighty dollars ($1,880)*.

(b) For instruction of educationally handicapped minors in homes or in hospitals, one thousand three hundred dollars ($1,300).

(c) For instruction of physically handicapped minors in remedial physical education, ~~nine hundred fifty dollars ($950)~~ *seven hundred seventy-five dollars ($775)*.

(d) For remedial instruction of physically handicapped minors in other than physical education, ~~two thousand seven hundred forty dollars ($2,740)~~. *two thousand dollars ($2,000)*.

(e) For instruction of blind pupils when a reader has actually been provided to assist the pupil with his studies, or for individual instruction in mobility provided blind pupils under regulations prescribed by the State Board of Education, or when braille books are purchased, ink print materials are transcribed into braille, or sound recordings

and other special supplies and equipment are purchased for blind pupils, or for individual supplemental instruction in vocational arts, business arts, or homemaking for blind pupils, nine hundred ten dollars ($910).

Braille books purchased, braille materials transcribed from ink print, sound recordings purchased or made, and special supplies and equipment purchased for blind pupils for which state or federal funds were allowed are property of the state and shall be available for use by blind pupils throughout the state as the State Board of Education shall provide.

(f) For other individual instruction of physically handicapped minors, one thousand three hundred dollars ($1,300).

(g) For the instruction of physically handicapped minors in regular day classes, ~~one thousand one hundred dollars ($1,100)~~ *one thousand eighteen dollars ($1,018)*.

(2) (a) The allowances provided under Section 18102 may be increased proportionately on account of special day classes convened, or other instruction provided a pupil, for days in a school year which are in excess of the number of days in the school year on which the regular day schools of a district are convened.

(b) The Superintendent of Public Instruction shall compute for each applicant school district and county superintendent of schools in providing in such year a program of specialized consultation to teachers, counselors and supervisors for educationally handicapped minors, an amount equal to the product of ten dollars ($10) and the average daily attendance of pupils enrolled in special day classes, learning disability groups, and home and hospital instruction for educationally handicapped minors.

SEC. 53. Section 18102.10 of the Education Code is amended to read:

18102.10. For each special class or program for which a state allowance is provided under this article or under Section 18060 or 18062, each school district and each county superintendent of schools maintaining such

special classes or programs shall report annually to the Superintendent of Public Instruction, on forms he shall provide, all expenditures and income related to each special class or program.

If the Superintendent of Public Instruction determines that the current expense of operating a special class or program as defined in the California School Accounting Manual does not equal or exceed the sum of the basic program support determined pursuant to Section 17662 and the allowance provided under this article for each pupil in average daily attendance in the special class or program maintained by a school district for each pupil in average daily attendance in special classes or programs maintained by the county superintendent of schools, then the amount of such deficiency shall be withheld from state apportionments to the school district or the county superintendent of schools, as the case may be, in the succeeding fiscal year in accordance with the procedure prescribed in Section 17414.

Expenditures for equipment that the Superintendent of Public Instruction determines are necessary for instruction in a special class or program for physically handicapped minors shall be considered as current expense for purposes of this section. In any year the district's allowable expenditure for such equipment may not exceed 1 percent of the current expense of operating the district's physically handicapped program.

SEC. 54. Section 18355 of the Education Code is amended to read:

18355. The Superintendent of Public Instruction shall allow, in addition to all other allowances, to the county school service funds: (a) for all emergency schools maintained in each elementary school district of the county by the county superintendent of schools, (b) all special schools or classes for mentally retarded minors and severely mentally retarded minors maintained in each elementary school district of the county by the county superintendent of schools, (c) each elementary school maintained in juvenile halls, juvenile homes, and juvenile camps, by the county superintendent of schools,

and all opportunity schools and classes maintained by the county superintendent of schools pursuant to Sections 6502 and 6503, and (d) all schools and classes for educationally handicapped minors maintained in each elementary school district of the county by the county superintendent of schools, the same amount per elementary pupil as he would allow under Section 17662.

No allowance shall be made for emergency schools which is in excess of the actual expense of maintaining the emergency school.

SEC. 55. Section 18358 of the Education Code is amended to read:

18358. For all physically handicapped pupils, mentally retarded minors and educationally handicapped minors of secondary grade, and handicapped adults, educated by the county superintendent of schools and for all secondary schools maintained in juvenile halls, juvenile homes and juvenile camps by the county superintendent of schools, the Superintendent of Public Instruction shall allow the same amount per high school pupil as he would allow under Section 17662.

However, with respect to handicapped adults, the following limits shall apply:

(a) The total of allowances for education of handicapped adults in classes established by the county superintendent of schools pursuant to Section 5746 shall not exceed fifty thousand dollars ($50,000) in any one fiscal year. The Superintendent of Public Instruction shall establish a system of priorities that he shall by rule or regulation adopt which shall give highest priority to those counties in which no or an insufficient program for the education of handicapped adults is provided by the school districts within the county, in order to comply with the limitation prescribed by this subdivision.

(b) The Superintendent of Public Instruction shall allow for handicapped adults the amount specified in Section 17951 for each unit of average daily attendance for adults for high school districts.

SEC. 56. Section 18401 of the Education Code is

amended to read:

18401. The Superintendent of Public Instruction shall allow to each county school tuition fund one hundred twenty dollars ($120) for each unit of average daily attendance of pupils residing in the county and attending school in an adjoining state during the fiscal year. Such average daily attendance shall not be included in the computations provided for in Section 17702.

SEC. 57. Section 20404 of the Education Code is amended to read:

20404. On or before August 15, the county board of education shall file with the board of supervisors a certified statement showing the amount of money to be raised by a county tax for purposes of this chapter. The board of supervisors shall fix a rate for the county tax sufficient to produce the amount specified in the statement and shall, at the time of levying other county taxes, levy the tax so fixed.

The proceeds of the tax levied pursuant to this section shall be credited to the single county school service fund of the county and any expenses of the county superintendent of schools, the county board of education, and the county committee on school district organization required by Section 881 or any other sections of this code required to be paid from the county general fund shall not be paid from such fund but shall be paid from the money in the single county school service fund.

A tax levied pursuant to this section shall not exceed the rate of ten cents ($0.10) per one hundred dollars ($100) of assessed valuation for administrative and business functions.

SEC. 58. Section 20751 of the Education Code is repealed.

SEC. 59. Section 20751 is added to the Education Code, to read:

20751. (a) It is the intent of the Legislature that ~~statutory maximum tax rates be sufficient to permit an average wealth school district to provide an average expenditure program when local revenues are combined with state allowances and apportionments.~~

~~(b) The maximum tax rate per each one hundred dollars ($100) of assessed valuation for an elementary, high school, and unified school district is as set forth in the following table:~~

~~Fiscal Year~~	~~Elementary~~	~~High School~~	~~Unified~~
~~1972/1973.....~~	~~$2.00~~	~~$1.20~~	~~$3.20~~
~~1973/1974.....~~	~~1.75~~	~~1.10~~	~~2.85~~
~~1974/1975 and following.....~~	~~1.50~~	~~1.00~~	~~2.50~~

~~(c) The maximum tax rate for a community college district is thirty/five cents ($0.35) for community college purposes, and ten cents ($0.10) for adult education purposes, on each one hundred dollars ($100) of assessed valuation.~~

~~(d) The maximum tax rates set forth in this section may be exceeded with the approval of a majority of the electorate pursuant to Section 20803.~~

~~(e) If the authorized expenditure level for the 1972/73 fiscal year exceeds seven hundred twenty/five dollars ($725) for elementary districts or exceeds nine hundred twelve dollars ($912) for high school districts, such expenditures may not be increased except by election of the voters of the district.~~

~~(f) If, during 1973/74, and in subsequent fiscal years, the authorized expenditure level exceeds the statewide average current expense of education per unit of average daily attendance for the elementary districts and 112 percent of the statewide average current expense for high school districts, such expenditures may not be increased except by election of the voters of the district.~~ *expenditure controls applied pursuant to Article 3 (commencing with Section 17701) of Chapter 3 of Division 14 replace statutory school district tax rate limitations for elementary, high school, and unified districts.*

No district may exceed the authorized expenditure level determined pursuant to Article 3 (commencing

with Section 17701) of Chapter 3 of Division 14 unless such excess expenditures have been approved by the electorate pursuant to Section 20803.

For community college districts the maximum tax rate shall be thirty-five cents ($0.35) for community college purposes, and ten cents ($0.10) for adult education purposes, on each one hundred dollars ($100) of assessed valuation.

SEC. 60. Section 20800 of the Education Code is repealed.

SEC. 61. Section 20801.5 of the Education Code is repealed.

SEC. 62. Section 20802.8 of the Education Code is repealed.

SEC. 63. Section 20806 of the Education Code is amended to read:

20806. For the purpose of providing funds for the payment by the district of all or part of the premiums, dues, or other charges for health and welfare benefits on active officers and employees and retired officers and employees who at the time of retirement were enrolled in a health and welfare benefit plan, or on the spouses and dependent children of such active and retired officers and employees, or on both such active and retired officers and employees and their spouses and dependent children, which the governing board of a district may have authorized in accordance with the provisions of Article 1 (commencing with Section 53200) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code and for the expenses incurred by the district in administration of a program involving the payment of such health and welfare benefits, district taxes, up to a maximum of five cents ($0.05) per one hundred dollars ($100) of assessed valuation, may be levied and collected annually by the respective district at the same time and in the same manner as other district taxes are levied and collected. The tax shall be in addition to any other district tax now or hereafter authorized by law, and shall not be considered in fixing maximum rates of tax for school district purposes. Moneys collected pursuant to this

section may also be expended for the requirements of Section 13658.

The provisions of this section authorizing the payment of all or part of the premiums, dues, or other charges for health and welfare benefits for the retired officers and employees who at the time of retirement were enrolled in a health and welfare benefit plan, shall be limited in applicability to any school district, or of two or more school districts governed by governing boards of identical personnel, having an average daily attendance of 400,000 or more as shown by the annual report of the county superintendent of schools for the preceding year.

SEC. 64. Section 20807 of the Education Code is repealed.

SEC. 65. Section 20808 of the Education Code is repealed.

SEC. 66. Section 20808.5 of the Education Code is repealed.

SEC. 67. Section 20816 of the Education Code is repealed.

~~SEC. 68. Sections 2, 3, 4, 5, 6, 7, 9, 10, 11, 60, 61, 62, 64, 65, 66, and 67 of this act shall become operative on July 1, 1974. From July 1, 1972, until July 1, 1974, the taxes for special purposes actually levied in all school districts which will be eliminated pursuant to those sections of this act shall be reduced by an amount which will limit the revenues of each district to not more than will provide the prior year's expenditure level plus the application of the reasonable expenditure increment factor pursuant to Article 3 (commencing with Section 17701) of Chapter 3 of Division 14 of the Education Code. All such rates shall be reduced proportionately unless the county superintendent of schools approves an alternate method of reduction.~~

O

APPENDIX "C"

AMENDED IN SENATE JUNE 20, 1972

AMENDED IN SENATE MAY 23, 1972

SENATE BILL No. 1302

Introduced by Senators Dymally, Alquist, Grunsky, ~~and~~ ~~Rodda~~ *Rodda, Behr, and Moscone*

(Coauthors: Assemblymen Arnett, Cory, Dunlap, Bill Greene, ~~and~~ ~~Lewis~~ *Lewis, Fong, and MacDonald*)

March 15, 1972

An act to ~~*add Chapter 6.1 (commencing with Section 6445) to Division 6*~~ AMEND SECTION 16601.5 *of, to add Sections 16602.5 and 16602.6 to,* ~~*and to amend Section 16601.5*~~ TO ADD CHAPTER 6.1 (COMMENCING WITH SECTION 6445) TO DIVISION 6 OF, AND TO ADD ARTICLE 1.5 (COMMENCING WITH SECTION 16820) TO CHAPTER 1 OF DIVISION 13 *of, the Education Code,* AND *to amend the heading of Chapter 2.5 (commencing with Section 16150) of Part 4 of Division 9 of, to amend Section 16150 of, and to add Sections 16151.5 and 16153.5 to, the Welfare and Institutions Code, relating to early childhood education, and making and appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1302, as amended, Dymally. ~~Education~~ *Early childhood education.*

~~States legislative intent re establishment of statewide program for early childhood education.~~

~~Defines "educational program for early childhood education" as the entire school/sponsored offering for pupils, other than exceptional children, in early primary classes, kindergarten, and grades 1 through 3, including in/class and out/of/class activities.~~

Requires State Board of Education to establish comprehensive program for early childhood education at

specified levels.

Authorizes governing boards of school districts maintaining specified grade levels to develop master plans for early childhood level in the 1972–73 fiscal year.

~~Permits, beginning with 1972/1973 school year, and requires beginning with 1976/1977 school year, each school district maintaining kindergarten and specified elementary grades, to submit to department of education for approval, a master plan for early childhood education.~~

Requires such school districts to develop and submit master plans by 1976–77 school year.

Authorizes governing boards to develop and submit joint master plans to Department of Education.

~~Specifies criteria to be contained in master plan.~~

Requires master plans to incude comprehensive statement setting forth district's educational program.

~~Specifies factors to be considered by State Board of Education in establishing preferences and priorities among school districts for purpose of apportioning state funds appropriated for implementation of early childhood education programs.~~

Requires State Board of Education to establish standards and criteria in evaluating district plans which shall include specified standards and criteria and specifies that the State Board of Education shall approve a plan which provides for initiation of classes for pupils who have attained the age of 3 years and 9 months unless such provisions contain a restructuring of kindergarten and grades one through three.

Authorizes State Board of Education to condition future allowances *on a priority basis and apportioning allowances thereby,* and *authorizes* scheduled increases thereof on school district's meeting objectives contained in master plan.

~~Authorizes State Board of Education to establish performance objectives in reading and mathematics for pupils participating in early childhood education programs.~~

Requires State Board of Education to adopt reading and mathematics objectives by 1975–76 school year, and allows the board to take all actions necessary to reach objectives.

~~Establishes schedule of allowances to school districts for purposes of early childhood educational programs, including~~

~~additional allowances for pupils with special educational needs.~~

Provides for allowances to districts with approved master plans in three specified classes.

Provides for additional allowances to pupils having demonstrable educational needs in three specified classes.

Authorizes Superintendent of Public Instruction to reduce district apportionments in accordance with amounts received pursuant to allowances for specialist teachers.

Requires Superintendent of Public Instruction to apportion funds.

Prescribes child enrollment procedure for early primary class, minimum school day, and computation of average daily attendance.

Specifies age for admission to an early childhood education program as 3 years and 9 months.

Specifies minimum schoolday for pupils in early childhood education classes as 180 minutes, including recesses.

~~Appropriates funds for fiscal years 1973/1974 through 1977/1978, for purposes of early childhood education programs. Requires that of funds so appropriated, so much thereof as is needed shall be used to match federal funds to support pupils eligible under the Social Security Act for public social services. Authorizes Department of Education to allocate funds appropriated for specified compensatory preschool programs, to augment preschool, children's center, group child care, and early childhood educational programs.~~

Declares legislative purpose in having program of transportation of pupils attending early primary classes and permits the governing board of any school district to transport pupils or parents attending such classes maintained for pupils who have attained the age of 3 years and 9 months.

Appropriates funds, in varying amounts, to the Superintendent of Public Instruction for providing state reimbursements for such transportation for each of the fiscal years from 1973–74 through 1977–78, inclusive.

Includes group child care and early childhood education programs within scope of various existing provisions relating to preschool, children's center, and day care programs, and excludes day care programs from such provisions.

Requires Department of Social Welfare to contract with Department of Education to provide system of prescribed social services for children and families of children enrolled in an early childhood education program. Prohibits making of any per capita reimbursements under such social services on account of any school district not meeting prescribed standards for educational component of a program.

Makes appropriations of specified amounts from the General Fund to the Department of Education for purposes of specified early childhood education programs for 1973–1974, 1974–1975, 1975–1976, 1976–1977, and 1977–1978 fiscal years.

Makes provision re use of certain other funds for purposes of early childhood education programs contingent upon enactment of ~~unspecified Assembly Bill~~ *AB 1283*.

Vote—Majority; Appropriation—Yes; Fiscal Committee—Yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 6.1 (commencing with Section 6445) is added to Division 6 of the Education Code, to read:

CHAPTER 6.1. EARLY CHILDHOOD EDUCATION

~~6445. The Legislature hereby finds and declares that~~ *6445. For the purposes of this chapter, "early childhood education programs" are defined as all educational programs, except those for exceptional children as defined in Section 6870, offered in the public school system, including in-class and out-of-class activities, for children age 3 years and 9 months, to 8 years under a local school-by-school comprehensive master plan approved by the State Board of Education which is designed to assure:*

(a) A comprehensive restructuring of primary education in California kindergarten through third grade to more fully meet the unique needs, talents, interests and abilities of each child.

(b) That early educational opportunities are made available to children who are 3 years and 9 months of age to take advantage of the capacity for learning of children at this age level.

(c) The cooperation and participation of parents in the educational program to the end that the total community is involved in the development of the program.

(d) The pupils participating will develop an increased competency in the skills necessary to the successful achievement in later school subjects such as reading, language, and mathematics.

(e) Maximize the use of existing state and federal funds in the implementation of early childhood education programs.

6445.1. The Legislature hereby finds and declares that a comprehensive program of early childhood education is needed to restructure public education in California. The Legislature, therefore, declares its intent to require that the State Board of Education develop a comprehensive program for children ages 3 years and 9 months, to 8 years. The objectives of this plan will include assurance that each child will have an individualized program to permit the development of his maximum potential and that all pupils who have completed the third grade of the state's educational system will have achieved a level of competence in the basic skills of reading, language, and mathematics sufficient to continued success in their educational experiences. The system will be based on the development of a local school-by-school master plan for early childhood education which shall include a phase-in program based on an increase in the number of schools in the state participating each year until maximum participation is achieved.

~~a comprehensive and coordinated program of early childhood education developed by the State Board of Education is needed to improve and restructure public education in California. The Legislature declares its intent to require that the State Board of Education~~

~~establish a comprehensive program for early childhood education for children in early primary, kindergarten, and grades 1 through 3, through a system for the development of a local master plan for early childhood education. Such system shall include a phased-in program based on an increase in the number of schools in the state participating each year until maximum participation is achieved, the coordination of all available state and federal funding sources, maximizing available federal funds, and the elements specified in Section 6445.1.~~

~~6445.1. As used in this chapter:~~

~~(a) "Early childhood education" includes all educational programs, except programs or classes for exceptional children as defined in Section 6870, offered in early primary classes, kindergartens, and grades 1 to 3, inclusive, or in any one or more such classes or grades.~~

~~(b) "Educational program for early childhood education" means the entire school-sponsored offering for pupils, except for exceptional children defined in Section 6870, in early primary classes, kindergartens, and grades 1 to 3, inclusive, including in-class and out-of-class activities.~~

~~(c) "Early primary grade" or "early primary class" means a class established pursuant to Education Code Section 6446.~~

~~(d) "Department" means the Department of Education.~~

6445.2. Beginning with the 1972–1973 ~~school year,~~ *fiscal year* each school district maintaining kindergarten, and grades 1 to 3, inclusive, or any one or more such class or grade, may develop and submit to the ~~department~~ *Department of Education* for approval a master plan for early childhood education. Each such school district shall submit *to the Department of Education for approval* a master plan for early childhood education ~~to the department~~ no later than the 1976–1977 school year. Application shall be made in accordance with rules and regulations adopted by the State Board of Education.

6445.3. The governing boards of ~~two or more~~ *any* school districts maintaining any such class or grade may,

with the approval of the ~~department~~ *Department of Education*, develop and submit for approval a joint master plan for early childhood education.

6445.4. A master plan for early childhood education shall include a comprehensive statement setting forth the district's educational program for early childhood education. The State Board of Education shall establish standards and criteria to be used in the evaluation of plans submitted by school districts. Such standards *and criteria for review and approval of plans by the State Board of Education* shall include, but need not be limited to ~~; criteria to insure that approved plans make~~ provision for:

(a) ~~An assessment~~ *Assessment* of educational needs ~~of the district~~.

(b) A program of restructuring of kindergarten through third grade.

~~(b)~~ *(c)* Opportunities for ~~early primary education provided by the district~~ *educational programs for pupils three years and nine months of age including children's center, day care, preschool, and child care services*.

~~(c)~~ *(d)* Defined and measurable program objectives.

~~(d) A carefully articulated program from early primary through grade 3.~~

(e) A local program designed to systematically phase into the program all the schools of the district in no more than five years.

~~(e)~~ *(f)* Coordination of all district resources with the objectives of the local plan.

~~(f)~~ *(g)* Emphasis on an individualized diagnostic approach to instruction.

~~(g) Strong parental~~ *(h) Parental and community* involvement.

~~(h)~~ *(i)* Staff development and inservice training.

~~(i)~~ *(j)* Transportation of pupils participating in the program.

~~(j)~~ *(k)* Evaluation of the program.

~~6445.5. In approving master plans for early childhood education the department shall give preference to those districts which have the largest number of pupils~~

~~determined to have special educational needs and the least financial ability to provide funds for early childhood education. The State Board of Education shall adopt regulations setting forth criteria for determining special educational needs, taking into consideration such factors, among others, as low family income and low level of academic achievement.~~

~~6445.6. The State Board of Education shall adopt standards setting forth priorities for allowances under this chapter. Until such time as allowances are granted for the benefit of all pupils eligible in a district a minimum of 50 percent of the amount allowed to the district in any one year shall be allocated for the benefit of pupils with special educational needs as determined pursuant to criteria established in accordance with Section 6445.5. Such standards may provide that allowances to a district shall be provided on a phase-in basis rather than to all pupils eligible therefor under Sections 6445.8 and 6445.9.~~

The State Board of Education shall not approve a plan which provides for the initiation of classes for pupils who have attained the age of 3 years and 9 months unless it also contains provisions for restructuring kindergarten and grades 1 through 3.

6445.5. School districts with master plans for early childhood education approved pursuant to Section 6445.4 shall be eligible for allowances authorized under Sections 6445.12, 6445.13, and 16821. Such allowances shall be apportioned to the extent that funds are available on a priority basis in accordance with a schedule established by the State Board of Education.

6445.6. In apportioning allowances in accordance with Section 6445.5 for early childhood education, the Department of Education shall give highest priority to (1) those districts which have the largest number of pupils determined to have educational need, and (2) those districts with the lowest measure of assessed valuation per pupil and making the most significant property tax effort.

The State Board of Education shall adopt regulations setting forth criteria for the determination of educational

need which shall be based on such factors as a low level of pupil achievement and a low level of family income.

6445.7. Districts receiving allowances pursuant to this chapter shall provide that a minimum of 50 percent of the amount allowed to the district in any one year shall be designated for schools with the largest number of pupils with educational need identified pursuant to Section 6445.6 until such time as allowances are authorized for all schools.

6445.8. The State Board of Education may further provide that ~~if~~, upon its determination ; *that* a district has not met the objectives of its approved plan, allowances shall not be increased in accordance with the phase-in schedule of the district's approved plan. The board ~~may provide that the failure of a district, over a designated period, to meet the objectives of its approved plan shall subject the district to a termination of allowances under this chapter.~~ *shall provide for an annual review of the success of each local district in meeting the objectives of its approved plan for early childhood education. The board shall adopt rules and regulations governing the termination of allowances to districts which are unsuccessful in meeting the objectives of their approved plan.*

~~6445.7~~ *6445.9*. The State Board of Education shall adopt pupil performance objectives in reading and mathematics for use in district early childhood education programs not later than the 1975–1976 school year. The board ~~may~~ *is authorized to* take all actions necessary to effect the development, testing, validation, adoption and implementation of such objectives.

6445.10. (a) Each district with an approved master plan shall submit to the Department of Education a report of its early childhood education program. Such report shall be submitted in a form and manner and at such times, but not less than annually, as prescribed by the State Board of Education. The report shall include, but not be limited to, factors relating to:

(1) Fiscal expenditures.

(2) Degree and success of program implementation.

(3) Quantitative estimate of pupil progress.

(b) The Department of Education shall derive a composite score for each school which shall be obtained from each of the three factors listed in paragraphs (1), (2), and (3) of subdivision (a). In determining such score, the Department of Education shall, for the first year of participation by the school, assign a weight of 20 percent for factor (1), 70 percent for factor (2), 10 percent for factor (3). For the second year of participation by the school, the factors shall be assigned a weight of 10 percent for factor (1), 50 percent for factor (2), 40 percent for factor (3). For the third and each subsequent year of participation, only factors (2) and (3) shall be considered and shall receive equal weighting.

6445.11. The Department of Education shall compute an index of student attainment for each participating school, using factors which have been shown to be predictive of school success. The obtained score for each school shall be weighted by the degree this score meets or exceeds the predicted school achievement level. Obtained scores falling below the predicted level of attainment shall be treated as a zero score. The Department of Education shall inform each participating district of the relative performance of their participating schools. Such data shall regularly be analyzed and evaluated and submitted to the Legislature in the form of an annual report not later than the fifth legislative day of each regular session of the Legislature.

~~6115.8~~ *6445.12*. From the funds appropriated *therefor* by the Legislature to the ~~department~~ *Department of Education* for the purposes of this chapter, the Superintendent of Public Instruction shall allow ~~to each school district with an approved master plan,~~ *school districts with approved master plans* for the education of children pursuant to such ~~plan an amount equal to~~ *plans*:

(a) Five hundred dollars ($500) per pupil in average daily attendance in the district in each ~~early primary class~~ *class maintained for pupils who have attained the age of 3 years and 9 months*.

(b) One hundred thirty dollars ($130) per pupil in

average daily attendance ~~in the district~~ in each kindergarten class.

(c) One hundred thirty dollars ($130) per pupil in average daily attendance ~~in the district~~ in grades 1 to 3, inclusive.

~~6115.9~~ *6445.13*. In addition to the allowances provided for in Section ~~6115.8~~ *6445.12*, the Superintendent of Public Instruction ~~shall allow to each school district having an approved master plan, on account of pupils having demonstrated special educational needs, as determined in accordance with Section 6115.5, an amount equal to:~~ *shall provide grants for pupils determined by him to have demonstrated educational need, in accordance with Section 6445.6, as follows:*

(a) One hundred dollars ($100) per pupil in average daily attendance ~~in the district in each early primary class~~ *in each class for pupils who have attained the age of 3 years and 9 months*.

(b) Sixty-five dollars ($65) per pupil in average daily attendance ~~in the district~~ in each kindergarten class.

(c) Sixty-five dollars ($65) per pupil in average daily attendance ~~in the district~~ in grades 1 to 3, inclusive.

~~6115.10. Funds available for allowances by the Superintendent of Public Instruction pursuant to Article 5 (commencing with Section 5789) of Chapter 5.8 of Division 6 of the Education Code to each school district which is also eligible for allowances under this chapter are hereby reappropriated for allowances to such districts under this chapter.~~

6445.14. In computing allowances authorized pursuant to Section 6445.12 the Superintendent of Public Instruction shall reduce such allowances by the amount per pupil apportioned pursuant to Article 5 (commencing with Section 5789) of Division 6.

~~6115.11~~ *6445.15*. Allowances under this chapter shall be made by the Superintendent of Public Instruction from funds appropriated therefor by the Legislature. The allowances shall be made as early as practicable in the fiscal year and upon order of the Superintendent of

Public Instruction the State Controller shall draw his warrants upon the money appropriated, in favor of the eligible districts in the amounts ordered.

6445.16. The Department of Education shall continuously monitor and review to assure that all funds appropriated to school districts under this chapter are expended for the purposes intended.

6445.17. Allowances shall not be granted under this chapter to a district unless the fiscal effort of the district with respect to early childhood education for any fiscal year of participation under this chapter was not less than the fiscal effort for that purpose for the fiscal year preceding the district's participation under this chapter.

6445.18. Allowances shall not be granted to a district unless the fiscal effort of that district with respect to each child participating in the early childhood education program for any fiscal year of participation under this chapter is no less than the fiscal effort of the district per elementary child not participating in the early childhood education program. The Department of Education shall annually review individual district expenditures to assure the comparability of local support based on rules and regulations adopted by the State Board of Education which take into account growth in district enrollment and increases in district costs.

~~6445.19~~ *6445.19*. The State Board of Education shall have the power to adopt and promulgate all rules and regulations necessary to the effective administration of this chapter, including, but not necessarily limited to, those specifically required to be adopted by particular provisions of this chapter.

~~6445.20~~ *6445.20*. The governing board of the school district, in its application for approval of a master plan, may request waiver of the provisions of any section or sections of this code if such waiver is necessary to establish and operate an early childhood education program. The need for waiver shall be explained and justified in the application. The Superintendent of Public Instruction, with approval of the State Board of Education, may grant, in whole, or in part, any such

request *when, in the opinion of the Superintendent of Public Instruction, failure to grant such request would hinder the implementation and maintenance of the district's program.*

6445.21. A school district in its application for approval of a master plan for early childhood education may include children's center services as provded for in Section 16603.

6446. The governing board of any school district which has had a master plan for early childhood education approved by the ~~department~~ *Department of Education* shall establish and maintain ~~sufficient number of early primary classes~~ *such number of classes for pupils who have attained the age of 3 years and 9 months,* as are necessary to implement such approved master plan for children ~~residing in the district who~~ *living in the district that* are eligible for admission pursuant to Section 6446.1 but are not eligible for admission pursuant to Section 5254 and whose parents or guardians present them for admission.

6446.1. A child may be admitted to ~~an early primary~~ *a* class established pursuant to Section 6446 ~~only~~ *in any term* during the first school month of the term ~~and only if he is then~~ *if he is* of the age prescribed. For good cause the governing board of a school district may permit a child of the proper age to be admitted to the class after the first school month of the school term.

If there is but one term during the school year, the child shall be three years and nine months of age on or before September 1 of the current school year. If there are two terms maintained during the school year, the child shall be three years and nine months on or before September 1 of the current school year, ~~to~~ *before he may* be admitted in the first term of the school year, or three years and nine months of age on or before February 1 of the current school year, ~~to~~ *before he may* be admitted in the second term in any school year.

As part of a master plan approved under Section 6445.4 school districts may authorize admission of any child who is four years of age regardless of time of admission in the

school year.

6446.2. The State Board of Education shall establish minimum standards authorizing service of instructional personnel in ~~early primary classes~~ *classes established pursuant to Section 6446*.

6446.3. The minimum schoolday for ~~pupils in early primary classes~~ *classes established pursuant to Section 6446* is 180 minutes inclusive of recesses.

6446.4. The computation of average daily attendance in ~~early primary classes~~ *classes established pursuant to Section 6446* for the purpose of determining allowances under Sections ~~6445.8 and 6445.9~~ *6445.12 and 6445.13*, shall be as prescribed in Section 11301. Sections 10951 to 10955, inclusive, and Sections 11001, 11002, 11007 and 11301.6 shall apply ~~to early primary classes~~.

6446.5. So much of the ~~money allocated for allowances pursuant to Section 6445.9~~ *moneys appropriated for allowances pursuant to Section 6445.12*, as is needed, shall be for the purpose of providing state funds to ~~match~~ *be matched with* available federal funds to support those pupils eligible under the Social Security Act for public social services. Federal reimbursement shall be obtained by the Department of Social Welfare for services to children of those families, designated by the State Department of Education, eligible for federal financial participation under the Social Security Act. The State Department of Social Welfare and the State Department of Education shall enter into a contract wherein the Department of Education agrees to provide educational services for such pupils wherein the Department of Social Welfare agrees to pay to the Department of Education all costs of services to participants.

~~6446.6. Nothing in this chapter shall be construed to sanction, perpetuate, or promote the racial or ethnic segregation of pupils in the public schools.~~

SEC. 2. Section 16601.5 of the Education Code is amended to read:

16601.5. The facilities used for any children's center established pursuant to this chapter shall first be used for

children of families meeting the conditions of Section 16603.1 and may then be made available for children eligible for any children's center, preschool or group child care program, authorized by the laws of this state, and any early childhood education program conducted under Chapter 6.1 (commencing with Section 6445) of Division 6.

The Department of Education shall develop guidelines and procedures for allocating funds appropriated for compensatory preschool educational programs as defined in Section 16151 of the Welfare and Institutions Code to augment preschool, children's center, and group child care programs, and early childhood education programs conducted under Chapter 6.1 (commencing with Section 6445) of Division 6. Any moneys appropriated for such purpose in any fiscal year which are not expended may be carried over into the next succeeding fiscal year, and shall be available for expenditure in such fiscal year in addition to those funds appropriated for such purpose for such year.

SEC. 3. Section 16602.5 is added to the Education Code, to read:

16602.5. A school district in its application for approval of a master plan for early childhood education pursuant to Chapter 6.1 (commencing with Section 6445) of Division 6 shall include children's centers' services as provided for in this chapter.

SEC. 4. Section 16602.6 is added to the Education Code, to read:

16602.6. The term "elementary school" contained in Section 425 of the United States Code (the National Defense Education Act of 1958, P.L. 85-864 as amended) shall include early primary, and preschool classes, including preschool classes in children's centers, for the purpose of the cancellation provisions of the Loans to Students in Institutions of Higher Learning.

SEC. 5. Article 1.5 (commencing with Section 16820) is added to Chapter 1 of Division 13 of the Education Code, to read:

Article 1.5. Transportation for Early Primary Pupils

16820. The Legislature hereby declares that a comprehensive program of early childhood education is necessary to improve and restructure public education in California so as to provide each pupil with an opportunity for the early development of primary skills. The program shall include classes maintained for pupils, who have attained the age of 3 years and 9 months, as an integral part of early childhood education.

The Legislature further finds that the transportation of pupils in such classes to and from school is an essential aspect of such program and a necessary part of any educational program designed for such children.

16821. Notwithstanding any other provision of law, the governing board of any school district may provide for the transportation to and from school of pupils who have attained the age of 3 years and 9 months and are enrolled in classes established pursuant to Section 6446, whenever in the judgment of the board, such transportation is advisable and good reasons exist therefor. A governing board may allow for the transportation of parents of pupils enrolled in such classes for the purpose of accompanying their children to and from the attendance center offering such early primary classes.

Children meeting the eligible age requirement for enrollment in such class who are attending a children's center, child day care center, or preschool program operated by a public or private agency are deemed to be enrolled in such class for the purpose of this section.

Districts shall receive state reimbursements for the transportation of such pupils pursuant to Article 10 (commencing with Section 18051) of Chapter 3 of Division 14 of the Education Code.

SEC. 6. There is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the purpose of providing state reimbursement for the transportation of pupils pursuant

to Section 16821, amounts for transfer to augment subdivision (b) of Section 17303.5 of the Education Code and which shall be made available for expenditure as follows:

(a) For the fiscal year 1973–74, eight hundred sixty-nine thousand eight hundred fifty dollars ($869,850).

(b) For the fiscal year 1974–75, two million twenty-nine thousand six hundred fifty dollars ($2,029,850).

(c) For the fiscal year 1975–76, three million one hundred eighty-nine thousand four hundred fifty dollars ($3,189,450).

(d) For the fiscal year 1976–77, four million three hundred forty-nine thousand two hundred fifty dollars ($4,349,250).

(e) For the fiscal year 1977–78, five million seven hundred ninety-nine thousand dollars ($5,799,000).

Any moneys made available for expenditure under this section in any such fiscal year which are not expended may be carried over into the next succeeding fiscal year, and shall be available for expenditure in such fiscal year in addition to those funds otherwise made available by this section for such year.

~~SEC. 5~~ *SEC. 7.* The heading of Chapter 2.5 (commencing with Section 16150) of Part 4 of Division 9 of the Welfare and Institutions Code is amended to read:

CHAPTER 2.5. PRESCHOOL, CHILDREN'S CENTER, GROUP CHILD CARE, AND EARLY CHILDHOOD EDUCATION PROGRAMS

~~SEC. 6~~ *SEC. 8.* Section 16150 of the Welfare and Institutions Code is amended to read:

16150. The Legislature finds and declares that preschool programs with a strong educational component are of great value to all children in preparing them for success in school, and constitute an essential component of public social services as defined in Section 16151. The Legislature further finds that such programs

are often not available to many children who, because of the low income of their families, parents in training, or minimal employment, are deprived of adequate care and this valuable educational experience. Therefore, it is the intention of the Legislature in enacting this chapter to provide equal educational opportunity to children of low-income or disadvantaged families through appropriate arrangements for preschool, children's center, group child care, and early childhood education programs of an educational value to be developed in accordance with a contractual agreement between the State Department of ~~Health~~ *Social Welfare* and the State Department of Education. The Legislature believes that the introduction of young children to an atmosphere of learning will improve their performance and increase their motivation and productivity when they enter school. In order to achieve this end, all programs established under this chapter shall be centered upon a defined educational program developed, conducted, and administered with the maximum feasible participation of the families served by the program.

~~SEC. 7~~ *SEC. 9.* Section 16151.5 is added to the Welfare and Institutions Code, to read:

16151.5. The State Department of Social Welfare shall enter into a contract with the State Department of Education to provide for a statewide system of social services for children educated under an early childhood education master plan pursuant to Chapter 6.1 (commencing with Section 6445) of Division 6 of the Education Code, to be established by school districts for children and families who meet the requirement for services under Education Code Section 6446.5. Social services shall include those provided for in Section 10053 and in Part 3 (commencing with Section 11000) of Division 9 of this code and the federal Social Security Act Amendments of 1967.

~~SEC. 8~~ *Sec. 10.* Section 16153.5 is added to the Welfare and Institutions Code, to read:

16153.5. Notwithstanding any other provision of this code, the State Department of Social Welfare shall not

provide any per capita reimbursement pursuant to Section 16151.5 on account of any local school district program established pursuant to this chapter which does not meet the educational standards established by the State Board of Education.

All programs established pursuant to this chapter shall meet the requirements of Section 107 of Public Law 90-222 (Economic Opportunity Amendments of 1967).

The State Department of Social Welfare shall have only such functions, duties and responsibilities with respect to early childhood education programs conducted pursuant to Chapter 6.1 (commencing with Section 6445) of Division 6 of the Education Code as is required by law and federal regulations.

~~SEC. 9~~ *Sec. 11.* There is hereby appropriated from the General Fund to the ~~Superintendent of Public Instruction~~ *Department of Education* for the purposes of Chapter 6.1 (commencing with Section 6445) of Division 6 of the Education Code, the following amounts:

(a) For allowances under Section ~~6445.8~~ *6445.12* amounts which shall be made available for expenditure as follows:

(1) For the fiscal year 1973–1974, forty-four million five hundred forty-four thousand dollars ($44,544,000).

(2) For the fiscal year 1974–1975, one hundred three million nine hundred thirty-six thousand dollars ($103,936,000).

(3) For the fiscal year 1975–1976, one hundred sixty-three million three hundred twenty-eight thousand dollars ($163,328,000).

(4) For the fiscal year 1976–1977, two hundred twenty-two million seven hundred twenty thousand dollars ($222,720,000).

(5) For the fiscal year 1977–1978, two hundred ninety-six million nine hundred sixty thousand dollars ($296,960,000).

(b) For the purposes of subdivision (a) of Section ~~6445.9~~ *6445.13*, amounts which shall be made available for expenditure as follows:

(1) For the 1973–1974 fiscal year, one million eight

hundred twenty-seven thousand seven hundred fifty dollars ($1,827,750.

(2) For the 1974–1975 fiscal year, four million two hundred sixty-four thousand seven hundred fifty dollars ($4,264,750).

(3) For the 1975–1976 fiscal year, six million seven hundred one thousand seven hundred fifty dollars ($6,701,750).

(4) For the 1976–1977 fiscal year, nine million one hundred thirty-eight thousand seven hundred fifty dollars ($9,138,750).

(5) For the 1977–1978 fiscal year, twelve million one hundred eighty-five thousand dollars ($12,185,000).

(c) For the purposes of subdivisions (b) and (c) of Section ~~6445.9~~ *6445.13*, amounts which shall be made available for expenditure as follows:

(1) For the 1973–1974 fiscal year, six million five hundred sixty-six thousand five hundred thirty-seven dollars ($6,566,537).

(2) For the 1974–1975 fiscal year, fifteen million three hundred twenty-one thousand nine hundred twenty dollars ($15,321,920).

(3) For the 1975–1976 fiscal year, twenty-four million seventy-seven thousand three hundred three dollars ($24,077,303).

(4) For the 1976–1977 fiscal year, thirty-two million eight hundred thirty-two thousand six hundred eighty-six dollars ($32,832,686).

(5) For the 1977–1978 fiscal year, forty-three million seven hundred seventy-six thousand nine hundred fifteen dollars ($43,776,915).

(d) The sum of five hundred thousand dollars ($500,000) for the administration by the State Department of Education of the provisions of Chapter 6.1 (commencing with Section 6445) of Division 6 of the Education Code.

Any moneys made available for expenditure under this section in any such fiscal year which are not expended may be carried over into the next succeeding fiscal year, and shall be available for expenditure in such fiscal year

in addition to those funds otherwise made available by this section for such year.

~~SEC. 10~~ *SEC. 12.* A master plan for early childhood education shall provide that to the extent feasible, funds allocated to the district pursuant to Chapter 6.10 (commencing with Section 6499.230) of Division 6 of the Education Code, as added by Assembly Bill No. *1 1 1283*, shall be for purposes of Chapter 6.1 (commencing with Section 6445) of Division 6 of the Education Code. This section shall become operative only if Chapter 6.10 (commencing with Section 6499.230) is added to Division 6 of the Education Code by Assembly Bill No. *1 1 1283* of the 1972 Regular Session.

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